

By Mr. KENNEDY of Rhode Island: Petition of Dr. Arthur T. Jones, of Providence, R. I., favoring preserving and strengthening the Medical Reserve Corps of the United States Army; to the Committee on Military Affairs.

By Mr. LESHNER: Petitions of Woman's Christian Temperance Union of 277 people of Berwick; Woman's Christian Temperance Union of 506 people of Orangeville; Lutheran Sunday School of 956 people of Milton; 100 people of Milton; United Brethren Church of Milton; Methodist Episcopal Church of Milton; 60 men of Milton; Woman's Christian Temperance Union of 245 people of Milton; 504 people of Milton; and Methodist Episcopal Church of 500 people of Milton, all in the State of Pennsylvania, favoring national prohibition; to the Committee on the Judiciary.

By Mr. LEWIS: Memorial of 457 members of labor unions and citizens of Rio Grande, P. R., asking for an investigation of conditions of the island; to the Committee on the Territories.

By Mr. LOUD: Petition of S. M. Pourie, secretary, Bangor Grange, No. 1089, Bay City, Mich., opposing the Madden rider in the Post Office appropriation bill; to the Committee on the Post Office and Post Roads.

By Mr. McKINLEY: Petitions of sundry business men of the State of Illinois, favoring tax on mail-order houses; to the Committee on Ways and Means.

By Mr. MAPES: Petitions of citizens of Grandville, Holland, Cedar Springs, and Sparta, Mich., favoring passage of the Susan B. Anthony amendment, enfranchising the women of the United States; to the Committee on the Judiciary.

By Mr. MORGAN of Oklahoma: Petition from the First Baptist Church Sunday School, Cherokee, Okla., asking for the speedy passage of the Webb-Smith national prohibition resolution, House joint resolutions 84 and 85; to the Committee on the Judiciary.

Also, petition from the Sunday School of the Methodist Episcopal Church, Byron, Alfalfa County, Okla., earnestly petitioning for the speedy passage of the Webb-Smith national prohibition resolution, House joint resolutions 84 and 85; to the Committee on the Judiciary.

Also, petition signed by 13 citizens of Cherokee, Okla., asking for the speedy passage of the Webb-Smith national prohibition resolution, House joint resolutions 84 and 85; to the Committee on the Judiciary.

By Mr. PRATT: Petition of Julian A. Morris, Edward H. Perkins, and 29 other citizens of Wayland, N. Y., favoring national prohibition; to the Committee on the Judiciary.

By Mr. RAKER: Petitions of 8 firms of Orland and Red Bluff; 12 firms of Yreka; 13 firms of Redding; 3 merchants of Plymouth; 9 firms of Dunsmuir; 10 firms of Corning; Campini & Garibaldi, of Drytown; 12 firms of Grass Valley; 4 firms of Amador City; 12 firms of Nevada City; 12 firms of East Auburn; 8 firms of Lincoln; 6 firms of Sisson; 4 firms of Weed; and 11 firms of Red Bluff, all in the State of California, favoring House bills 270 and 712; to the Committee on Ways and Means.

By Mr. ROGERS: Petition of citizens of Lowell, Mass., opposing House bills 491 and 6468; to the Committee on the Post Office and Post Roads.

By Mr. ROWE: Petition of the United States Steel Corporation of New York, against House bill 9411, the tag bill, relative to number painted on motor boats; to the Committee on the Merchant Marine and Fisheries.

Also, petitions of Real Estate Board of New York and New York Building Managers' Association, favoring appointment of commission to make investigation of the coal situation; to the Committee on Rules.

Also, memorial of the Chamber of Commerce of the State of New York, relative to national defense; to the Committee on Military Affairs.

Also, petition of Abraham Goldfaden Lodge, No. 505, I. O. B. A., against passage of the Burnett immigration bill; to the Committee on Immigration and Naturalization.

Also, petition of the General Federation of Women's Clubs, favoring House bill 8668, to establish a national park service; to the Committee on the Public Lands.

By Mr. SHOUSE: Petition of sundry citizens of Larned, Kans., protesting against passage of House bills 6468 and 491 and similar legislation; to the Committee on the Post Office and Post Roads.

By Mr. STINESS: Papers to accompany House bill 12964, granting an increase of pension to Emeline L. Bennett; to the Committee on Invalid Pensions.

Also, petition of Master Printers' Association of Rhode Island, favoring House bill 11621, providing for mailing of catalogues, circulars, etc., at the pound rate of 8 cents; to the Committee on the Post Office and Post Roads.

Also, petition of Providence Branch, No. 35, National Association of Bureau of Animal Industry Employees, favoring the Lobeck bill for the classification of the employees of the Bureau of Animal Industry; to the Committee on Agriculture.

Also, petition of William B. Kimball and others, of Providence, R. I., protesting against House bills 491 and 6468, to amend the postal laws; to the Committee on the Post Office and Post Roads.

Also, petition of Dr. Arthur T. Jones, of Providence, R. I., advocating the strengthening of the Medical Reserve Corps of the Army; to the Committee on Military Affairs.

Also, petition of Rhode Island Equal Suffrage Association, favoring Susan B. Anthony Federal amendment for woman suffrage; to the Committee on the Judiciary.

Also, petition of Brown Bros. Co., of Providence, R. I., against the passage of Senate bill 3598; to the Committee on Military Affairs.

By Mr. SUTHERLAND: Memorial of 500 citizens of Clarksburg, W. Va., favoring Federal motion picture commission for censorship of motion-picture films; to the Committee on Education.

By Mr. TILSON: Petition of Pastors' Union of New Haven, Conn., urging Congress to prohibit sale of liquor in the District of Columbia; to the Committee on the District of Columbia.

Also, petition of Pastors' Union of New Haven, Conn., urging Congress to establish a Federal motion picture commission; to the Committee on Education.

By Mr. WARD: Petition signed by Mrs. Alice E. Stevens, Tillson; Mrs. Helen A. Palmer, Gardiner, James B. Palmer, Plattekill; Elliot F. Soule, jr., Plattekill; J. E. Jenkins, Plattekill; and Joseph Millett, Tillson, all in the State of New York, representing the several churches, in reference to national constitutional prohibition amendment; to the Committee on the Judiciary.

## SENATE.

SATURDAY, April 1, 1916.

(Legislative day of Thursday, March 30, 1916.)

The Senate reassembled at 12 o'clock meridian, on the expiration of the recess.

### DEATH OF SENATOR SHIVELY.

The VICE PRESIDENT. The Chair lays before the Senate a note of thanks from Mrs. Shively addressed to the Senate of the United States, which will be read.

The Secretary read the note, as follows:

To the Senate of the United States:

Mrs. Shively and the members of her family desire to express their deep appreciation of your sympathy and extend to you their most grateful thanks for a beautiful floral wreath.

### PUBLIC BUILDING AT PARIS, TEX.

Mr. CULBERSON. Mr. President, I ask unanimous consent to report back from the Committee on Public Buildings and Grounds, favorably with amendments, the bill (S. 5270) for a public building or buildings at Paris, Tex., and I submit a report (No. 321) thereon. I desire its present consideration.

Mr. CHAMBERLAIN. If it does not lead to any discussion, I shall not make any objection.

The VICE PRESIDENT. Is there objection to the present consideration of the bill?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill.

The bill was reported from the Committee on Public Buildings and Grounds with amendments, in line 4, to strike out the words "appropriated, out of any money in the Treasury not otherwise appropriated" and to insert "authorized to be expended by the Secretary of the Treasury," in line 6 to strike out the words "or buildings," and in line 8, after "Paris," to insert "Texas," so as to make the bill read:

Be it enacted, etc., That the sum of \$200,000, or so much thereof as may be necessary, be, and the same is hereby, authorized to be expended by the Secretary of the Treasury, for the purpose of supplying the necessary building for the Federal court, post office, and other Government offices at Paris, Tex.

The amendments were agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

On motion of Mr. CULBERSON, the title was amended so as to read: "A bill for a public building at Paris, Tex."

### RECLAMATION - PROJECTS.

Mr. WORKS. Will the Senator from Oregon yield to me just a moment to offer a resolution of inquiry?

Mr. CHAMBERLAIN. I have no objection if it does not lead to discussion.

Mr. WORKS submitted the following resolution (S. Res. 157), which was read, considered by unanimous consent, and agreed to:

*Resolved*, That the Secretary of the Interior is directed to furnish the Senate with the following information:

First. The number of reclamation projects completed and under way, giving the name and the location of each of them.

Second. The number of acres being irrigated by each, and separately, the number of acres susceptible of irrigation from the system.

Third. How much of the land that is, or may be irrigated from each of the projects, is public lands and how much held in private ownership.

Fourth. The total number of acres of private lands now being irrigated by each of the projects, and how much of such lands is susceptible of irrigation by each.

#### NATIONAL DEFENSE.

Mr. CHAMBERLAIN. I ask to have the unfinished business laid before the Senate.

The VICE PRESIDENT. It is before the Senate now.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 12766) to increase the efficiency of the Military Establishment of the United States.

Mr. POMERENE. Mr. President, I desire to speak briefly this morning to the amendment proposed by the Senator from Iowa [Mr. CUMMINS]. On the same day that he gave notice he would offer this amendment I also gave notice that I would offer the amendment, and later I learned that the junior Senator from New York [Mr. WADSWORTH], who likewise had been interested in the subject, had presented substantially the same amendment.

I recognize the fact that there has been a good deal of very learned discussion as to how far the Government may federalize the National Guard. I do not intend to go fully into that question this morning, but suffice it to say that, so far as the pending amendment is concerned, it is not, in my judgment, relevant. Under the Constitution Congress is given this power, among others:

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress.

Of course no question can arise after the National Guard has been mustered into the Federal service as to the authority of the Commander in Chief over the National Guard. If the service of the National Guard is desired, and if there be any question as to the authority of the Federal Government to take over the National Guard under the present law, there is no doubt in my mind, first, that the National Guard would have the right to volunteer their services just as they did during the Spanish-American War, and, secondly, if they did not desire to volunteer their services, there is, in my judgment, no question about the authority of Congress to provide for the drafting of the National Guard into that service.

The Senator from Connecticut [Mr. BRANDEGEE] on yesterday introduced into the Record several very learned articles by the former Secretary of War, Mr. Stimson.

Mr. CLAPP. Will the Senator pardon an interruption?

Mr. POMERENE. Certainly.

Mr. CLAPP. Does the Senator mean by his expression "drafting the National Guard" that they could be drafted otherwise than as a part of the citizenship of the country subject to draft?

Mr. POMERENE. Oh, no; I do not.

Mr. CLAPP. I supposed not, but I thought the Senator expressed a little doubt.

Mr. POMERENE. I simply mean that Congress could adopt regulations by the terms of which the National Guard could be drafted into the service of the Federal Union.

Mr. CLAPP. Simply because they would be subject to the draft, like everybody else.

Mr. POMERENE. Most assuredly.

Mr. Stimson refers in a very learned way to the difficulties which arose between the militia and the Federal Government during the War of 1812. In brief, the authorities in Massachusetts and Connecticut insisted that the Federal Government did not have the power to call them; that they were subject more immediately to the control of the States than to the Federal Government, and the Supreme Court of Massachusetts sustained that contention. But later on the Supreme Court of the United States, according to the article written by Mr. Stimson, overruled—and, I think, rightly—the position taken by the Supreme Court of the State of Massachusetts.

I think we can agree in this proposition, that while the Federal Government is given the power to organize, arm, and discipline the National Guard, if the Federal Government should refuse to exercise that power the State could exercise it or the State and the Federal authorities could exercise this power

concurrently. But in the event that there should be any conflict as between the two authorities, then it must follow that the Federal authorities would have supremacy.

Mr. CUMMINS. Mr. President—

The VICE PRESIDENT. Does the Senator from Ohio yield to the Senator from Iowa?

Mr. POMERENE. I yield.

Mr. CUMMINS. I think the Senator from Ohio must have misunderstood the question propounded by the Senator from Minnesota. I desire to call the attention of the Senator from Ohio to the House provision with regard to the authority of the President to draft the National Guard in time of war. It is in section 77. The House provision is:

Sec. 77. That when Congress shall have authorized the use of the armed land forces of the United States in the emergency of actual or imminent war, requiring the use of troops in excess of those of the Regular Army, the President may, under such regulations as he shall prescribe, draft into the military service of the United States, to serve therein for the period of the war unless sooner discharged, any or all members of the National Guard.

I think it probable that the Senator from Ohio did not intend to say that the House provision in that respect is not valid or not constitutional.

Mr. POMERENE. I did not have in mind the House provision at all. I was simply discussing the general proposition, and I simply wanted to make myself clear as saying that the Federal Government would have the right to draft the National Guard just the same as it would the individual citizen. I do not intend to say, however, that it may not go further, and I do not intend this morning to discuss that question.

Mr. CUMMINS. I did not want any misunderstanding to arise. I express no opinion about it myself, but the House bill has definitely provided that the National Guard can in the event of war be drafted as such.

Mr. CLAPP. The Senator from Ohio and myself understood one another. He used the expression "draft the National Guard" and I supposed he meant that the members of the National Guard, as he was discussing the subject, would be subject to draft like any other citizen.

Mr. POMERENE. Most assuredly; the members of the National Guard are citizens of the State and citizens of the United States, and the mere fact that they may be members of the National Guard of a State does not deprive them of their character as citizens of the Federal Government and therefore subject to the rules and regulations which may be prescribed by the Federal Government.

Mr. BRANDEGEE. Mr. President—

The VICE PRESIDENT. Does the Senator from Ohio yield to the Senator from Connecticut?

Mr. POMERENE. I yield.

Mr. BRANDEGEE. Let me ask the Senator from Iowa, if I may, did I understand him to claim that the President could draft into the service of the United States the National Guard organizations as such?

Mr. CUMMINS. I said that the House bill so provides, but I did not express an opinion with regard either to the wisdom or the legality of the provision.

Mr. BRANDEGEE. If the Senator will pardon me, I do not read the House bill as he does. As I read the language which he himself read a minute ago in section 77, page 97, it provides that "the President may, under such regulations as he shall prescribe, draft into the military service of the United States, to serve therein for the period of the war unless sooner discharged, any or all members of the National Guard," but not the National Guard organization as such.

Mr. CUMMINS. I read it precisely as the Senator has now read it.

Mr. BRANDEGEE. I say the Senator did read it that way, and reading it that way I do not see how he finds authority there to draft the organizations entire as organizations as such but only the members of the organizations.

Mr. CUMMINS. What I said was that the House bill provided that the National Guard could be segregated from other citizens of the country and be subjected to a draft in time of war, because they are or would be members of the National Guard, and I so understand the House provision.

Mr. BRANDEGEE. Whether that is a segregation of the members of the National Guard from the other individuals of the country who are liable to do military service and be drafted therefor is a different proposition.

Mr. POMERENE. Mr. President, the matter which is now being discussed by Senators does not affect the important question which I have in mind and that is the wisdom or the unwisdom of the amendment which has been offered by the Senator from Iowa.



I take it that whatever system may be devised by the Federal Congress it is in part going to be composed of the National Guard, and that being so, necessarily the question arises as to how we should treat the National Guard. The militia existed in this country long before the Federal Army existed. The militia had done service, and valiant service. We have had them in time of peace and in time of war.

I recognize the fact that many who seem to think that we should have one centralized Federal Army are disposed to criticize, and criticize severely, the National Guard; but I dare say that if we were to look with a critical eye into the history of the military power of this country, for every criticism that can be advanced against the National Guard an equal criticism can be made against the manner in which the Regular Army itself has been organized and controlled.

It is not necessary to take the time of the Senate to refer to the splendid service which was rendered by the militia in many of the battles during the Revolutionary War. I grant you there have been mistakes made by it; but if we are to speak of mistakes we can not lose sight of the fact that during the Spanish-American War the Regular Army of this country was not itself perfect. For every mistake that was made by the militia which was mustered into the service during that war, a like mistake can be found to have been made on the part of those who had control of the Regular Army.

Under the provisions of this bill we have the Regular Army, the Volunteer Army, so-called, and the militia. No one differs, I take it, in the thought that the militia is to form a goodly part of whatever force we may have after this legislation has been completed. That being so, it seems to me that the one matter which should be given very careful consideration by the Senate and the House of Representatives is, How shall we treat the militia?

Reference was made yesterday to the incompetence of the militia as it existed in the early history of the country; some reference was made to it as it has existed since the civil war; but I want to remind those who are criticizing the militia of the country that, if there is any fault in the regulations which have controlled them in their organization, in their discipline, the fault does not lie any more at the door of the militia or the National Guard than it lies at the door of the War Department of this country, or at the very doors of Congress itself.

It is said the militia were not properly organized; that they were not properly disciplined. Well, what of it? Congress has the power to regulate the organization and the discipline; and it does that through the administrative power of the War Department itself. So, if they have not been properly disciplined, it is not because the Congress did not have the power to regulate it, for the Constitution itself provides that the Congress has the authority to organize, to arm, and to discipline the militia.

I take it that, if the militia in past years have not measured up to the proper standard, we can go a little further and inquire why. What encouragement has the Congress given to the militia? What attention has been paid to the militia by the War Department of this country? I assert that if no more attention had been paid to the Army itself by the Congress and by the War Department, if they had been given no more encouragement than the militia has been given by the Federal Government, they would not be able to surpass even the militia, if the standard of the militia were no higher than that which is charged against it by the critics of the National Guard.

But, Mr. President, whatever may be said of the militia and of its discipline as it existed before the Civil War or as it existed prior to the Spanish-American War, the same criticism can not with justice be directed toward that branch of the service now or since the Spanish-American War. I know something of the service which has been rendered by the National Guard in my own State; and when I speak of the National Guard I include both officers and men. They come from every locality in the State. The members of the National Guard are taken from the very best of our citizenry. If any criticism can be made of the officers of the National Guard of Ohio, it is that they have given so much attention to the development of the National Guard that they have been compelled to neglect their own private affairs. They have taken upon their shoulders the organization, the training, the discipline of the men under their command because of their love of the service and of the State and of their country. Very little, if any, encouragement has been given to them by the Federal Government, and when they have come to the Capital at Washington asking favors often they have been received with scant courtesy. I want to submit that, taken man for man, the National Guard of the State of Ohio and of many of the other States of which I have

some knowledge will measure up fairly well with the men in the Regular service.

Mr. Stimson, in one of his articles, refers to the fact that the attendance upon the drills by the National Guard has perhaps not been in excess of 60 per cent. It is a just criticism, which can be made; but it seems to me that if they are to be given the proper encouragement the failure to attend will be reduced to a minimum.

If we are going to criticize the militia, let us refer for a moment to conditions as they prevail in the Federal Army. According to a statement which is placed upon our desks this morning, we find that there are 67,765 men now alive who left the Regular Army during the last 10 years, and that of this number 6,893 "went into civil life" without terminating their services honorably. They either deserted and did not return to the service or were discharged by sentence of a general court-martial.

Now, if we are looking for mistakes which we want to correct, if we are looking for matters of criticism, let us be fair to both branches of the service; but it seems to me, instead of our dealing in crimination and recrimination against one branch or the other of this service, we should bend ourselves to the duty of ameliorating the condition of the service as affecting both the militia and the Regular Army.

Mr. President, we do not need to go very far to find that most of the criticism of the National Guard has emanated from the forces in the Regular Army. I take it that the War Department wants full and complete knowledge both as to the condition of the Federal forces and as to the condition of the National Guard; and if there is this prejudice or bias existing on the part of the one arm of the service against the other, it is impossible that right information can be taken to the Secretary of War or to the Commander in Chief of the Army, if he is to get all of his information through one branch of the service. Necessarily, if the Regular Army is not in sympathy with the National Guard, they will look, perhaps unconsciously, with some degree of prejudice upon that branch of the service; and if there is the defect in the discipline of the National Guard, as is contended by those who are criticizing them, is it not in part due to the fact that there has not been that close, intimate relationship existing between the National Guard and the Federal forces which ought to exist? This being so, what objection can there be to having on the General Staff a certain number of officers of the National Guard, who may be able to keep the War Department advised as to what is doing among the National Guard of the several States? Will not the War Department be benefited by this information? If any irregularities exist, can they not the better be corrected in this way?

The former Secretary of War suggested that in the National Guard there were 48 little armies, one for each State, under different degrees of discipline; that it was an inharmonious whole; and that to the extent the National Guard was composed of these different elements it was lacking in efficiency. Assuming that that criticism is just, who is to blame? Under the Federal Constitution the Federal Government has the power to legislate for the regulation and discipline of the National Guard, and if there are 48 armies in 48 States, differing in discipline, it seems to me that the Congress and the War Department are more to blame than are the National Guardsmen themselves.

Mr. LODGE. Mr. President, may I ask the Senator a question?

The PRESIDING OFFICER (Mr. PITTMAN in the chair). Does the Senator from Ohio yield to the Senator from Massachusetts?

Mr. POMERENE. Yes.

Mr. LODGE. Is it the intention that the officers of the National Guard whom it is proposed to add to the General Staff shall take part in the management of the Regular Army?

Mr. POMERENE. I assume that they would be there in an advisory capacity.

Mr. BRANDEGEE. As experts.

Mr. LODGE. Well, as experts, of course; but are they to take part in the management and direction of the Regular Army?

Mr. POMERENE. They are to constitute a part of the General Staff of the Army.

Mr. LODGE. The officers and men of the Regular Army, then, are to be pro tanto subordinate to these officers of the National Guard?

Mr. POMERENE. I do not imagine that they would be controlled by the members on the staff taken from the National Guard. They would participate in the management. There certainly would not be a majority of National Guardsmen on the General Staff by any means.

Mr. CHAMBERLAIN. Mr. President, if I may interrupt the Senator, I will say that it is proposed that the officers detailed to the General Staff from the National Guard shall have the same status as members of the General Staff from the Regular Army.

Mr. LODGE. That is, they would have part in the direction of the Regular Army of the United States?

Mr. CLAPP. No, Mr. President; they would act only as advisers.

Mr. LODGE. There is nothing of that sort in the amendment.

Mr. WARREN. The chairman of the committee is right; they would be the same as the other members of the staff.

Mr. CHAMBERLAIN. Exactly the same.

Mr. WARREN. As I have suggested in an aside to the Senator from Minnesota, the officers of the General Staff do not direct, except through the head of the department. Of course, they are advisers to the department.

Mr. CLAPP. That is all the officers of the National Guard will do.

Mr. LODGE. Are they to advise concerning and to have power over the Regular Army, or are they to be confined to National Guard matters?

Mr. CHAMBERLAIN. Mr. President, I think there is a misapprehension as to the powers and duties of the General Staff. They do not govern the Army—

Mr. LODGE. I understand that.

Mr. CHAMBERLAIN. And the National Guard officers, whom it is proposed to place on the General Staff, will have exactly the same functions to perform as the General Staff of the Army.

Mr. LODGE. Precisely; that is, they will advise not only in regard to the National Guard, but they will advise also as to the management and control of the Regular Army, of which the President is Commander in Chief.

Mr. WARREN. The same as the other officers of the General Staff, and the General Staff would still have to act through the Secretary of War.

Mr. LODGE. I understand that.

Mr. SMITH of Georgia. There would be only 5 members of the National Guard on the General Staff containing 92 officers of the Regular Army.

Mr. CUMMINS. Mr. President—

The PRESIDING OFFICER. Does the Senator from Ohio yield to the Senator from Iowa?

Mr. POMERENE. I yield to the Senator from Iowa.

Mr. CUMMINS. Mr. President, I simply desire to suggest to the Senator from Massachusetts that the General Staff under this bill is composed of 92 officers of the Regular Army. This amendment proposes to admit to that body 5 officers of the National Guard, and, inasmuch as the duties of the General Staff are entirely advisory, it seems to me that the presence of 5 members of the National Guard, as compared with 92 members of the Regular Army, ought not to create any great apprehension with respect to the advice that will be given from time to time by the General Staff.

Mr. LEE of Maryland. Mr. President, will the Senator from Ohio allow me to make a suggestion?

Mr. POMERENE. I yield to the Senator.

Mr. LEE of Maryland. Perhaps the Senator from Massachusetts was not here yesterday afternoon when the Senator from New York [Mr. WADSWORTH] gave a concrete and very apt example of the manner in which there could be cooperation between the National Guard officers of the General Staff as advisers and collaborators and the Regular Army officers on that staff. He illustrated a case where a militia officer had been requested to come here and collaborate with the General Staff as to the details of a proposed mobilization, and he showed how much use that officer had been to the General Staff in the suggestions he was able to give because of his knowledge of the details of the militia situation.

Mr. LODGE. If the Senator from Maryland has concluded—

Mr. LEE of Maryland. I have been trespassing on the time of the Senator from Ohio. I have concluded.

The PRESIDING OFFICER. Does the Senator from Ohio yield to the Senator from Massachusetts?

Mr. POMERENE. I yield to the Senator from Massachusetts.

Mr. LODGE. I was aware of the duties of the General Staff, and I gathered from reading the amendment that only five officers were to be added from the National Guard; but what I want to find out is whether they are to have the same advisory powers in regard to the Regular Army as other members of the General Staff, because that I think is an important point. I also want to know—and the Senator from Maryland has been kindly enlightening me in regard to the matter—whether a National

Guard officer from New York is to advise the Government what to do with the militia from Massachusetts?

Mr. POMERENE. Mr. President, the time may come, if there should be war, when it will be very necessary for the War Department to have all the information it can get from all sources. That being so, it occurs to me that it is not going to militate against the efficiency of the War Department if they can have some information and some advice from some national guardsman, particularly with reference to the efficiency of the organization and the qualifications of the National Guard, and they may be able to aid with their advice in the direction even of the Federal troops themselves. As the Senator from Iowa [Mr. CUMMINS] has suggested, the number would be so small that they could not dominate and control the operations of the Army if they would, and the members of the General Staff all act in an advisory capacity.

Let me give just a little incident which was brought to my notice by one of the officers of the National Guard of Ohio a few weeks ago in discussing this subject. At Camp Perry the National Guard meet once a year for their field practices. The entire guard are there. They go through the usual field maneuvers. Some of the officers of the Federal Army were out there to inspect the Ohio National Guard, and several of these officers stated to the officers of the National Guard that they themselves had been particularly benefited personally by witnessing these maneuvers, and further stated that never in their careers as officers of the Federal Army had they seen so many soldiers at one time on one field.

Mr. THOMPSON. Mr. President—

The PRESIDING OFFICER. Does the Senator from Ohio yield to the Senator from Kansas?

Mr. POMERENE. I do.

Mr. THOMPSON. Is it not true that the National Guard usually go to the military posts of the Regular Army for their maneuvers and drills, and that they use the same discipline as the Regular Army?

Mr. POMERENE. I know that they do attend. Whether it is a general rule or not, I can not say.

Mr. THOMPSON. The discipline is practically the same for one as it is for the other; is it not?

Mr. POMERENE. It should be the same.

Mr. President, I felt at the time this matter was called to my attention that no system was going to be adopted here which would not be in part composed of the National Guard. That being true, I see no reason why a limited number of the officers of the National Guard—who no doubt will be selected because of their efficiency and familiarity with military affairs, and particularly with the affairs of the National Guard—will not be a very great aid to the Government, not only in time of war but in time of peace, when it comes to the proper disciplining of the forces of the country.

For these reasons, very briefly stated, I indulge the hope that this amendment, or something akin to it, may be adopted.

Mr. BORAH. Mr. President, I desire to make some observations on those features of this bill which relate particularly to the so-called National Guard. I would not presume to discuss what may be called the expert features of this bill or of any bill providing for a military system, because I am not qualified to do so; but I am disposed to offer some observations as to that portion of the bill which has to do with law and government and politics.

Mr. President, the fathers nowhere disclosed greater wisdom than in those provisions of the Constitution wherein they equipped this country for self-defense. In no part of that instrument were more courage and foresight disclosed than in that part which has to do with the method and means by which the Republic can take care of itself in case of danger. With singular aloofness from those prejudices and sentiments which so often embarrassed the framers of free institutions in former times, they dared to lodge in one place that capacity for action and that unity of purpose so indispensable to governments in time of war. They were not afraid to trust the President with power sufficient to save the Republic for fear they might trust him with sufficient power to destroy the Republic. Their vision, their reasoning in this respect, amounted to the highest possible conception of statesmanship; and to do in the face of bitter denunciation what their judgment told them it was essential to do was an exhibition of moral courage ennobling to all who contemplate even again and again their work.

It was natural they should give care to this part of their work, because they had just come from the battle field. Washington and Hamilton, who had gone through the Revolution, sat in the convention. It was, therefore, quite logical for them to seek to avoid some of the mistakes which had been made by so-called republics in former times, wherein sufficient and efficient



power had not been given to the Government to protect itself in times of danger. To that end they set about to concentrate the powers of the Government so that those powers could be used effectively and efficiently and successfully in all military matters.

They had no illusions about a republic remaining at all times in a state of peace because of the fact that it was a republic. They understood thoroughly that, regardless of the form of government and of the purposes of the Government, or of the people, and of their devotion to peace, nevertheless there would be times when all the powers of the people must be concentrated in an effective means for the protection of the Government and of the people. They were perfectly familiar with the weakness of former republican governments wherein there was divided authority and divided responsibility with reference to military affairs. So, Mr. President, the builders of this Government centralized tremendous powers in the President of the United States in times of danger. The late Civil War revealed how much we owe to them for having done so.

Preliminary to the discussion of the real question before us, I call attention to the language of the Federalist upon some of these matters.

Mr. Hamilton, in the opening article of the Federalist, says:

On the other hand, it will be equally forgotten that the vigor of government is essential to the security of liberty; that in the contemplation of a sound and well-informed judgment their interests can never be separated; and that a dangerous ambition more often lurks behind the specious mask of zeal for the rights of the people than under the forbidding appearance of zeal for the firmness and efficiency of government. History will teach us that the former has been found a much more certain road to the introduction of despotism than the latter, and that of those men who have overturned the liberties of republics the greatest number have begun their career by paying an obsequious court to the people, commencing demagogues and ending tyrants.

In this opening article we find their lofty purpose indicated and a true revelation of their minds. They were not hesitant to leave the commanding of the entire Army and Navy of the United States to one man, the chosen Chief Magistrate of the country. They centralized, as no other Republic had even been willing to do, this power to command the fighting forces. While guarding the raising of the armies by certain provisions elsewhere found, in the matter of commanding the forces there was to be that individual responsibility which all their experiences warned them to be essential.

In No. 6 of the Federalist it is said:

But, notwithstanding the concurring testimony of experience in this particular, there are still to be found visionary or designing men, who stand ready to advocate the paradox of perpetual peace between the States, though dismembered and alienated from each other. The genius of Republics, say they, is pacific; the spirit of commerce has a tendency to soften the manners of men, and to extinguish those inflammable humors which have so often kindled into wars. Commercial Republics, like ours, never will be disposed to waste themselves in ruinous contentions with each other. They will be governed by mutual interest, and will cultivate a spirit of mutual amity and concord.

But, says the writer:

Have republics in practice been less addicted to war than monarchies? Are not the former administered by men as well as the latter? Are not there aversions, predilections, rivalships, and desires of unjust acquisitions that affect nations as well as kings? Are not popular assemblies frequently subject to the impulses of rage, resentment, jealousy, avarice, and of other irregular and violent propensities? Is it not well known that their determinations are often governed by a few individuals in whom they place confidence, and that they are, of course, liable to be tainted by the passions and views of those individuals. Has commerce hitherto done anything more than change the objects of war?

This is particularly interesting at this time; for, after all, one of the controlling influences which led to the great conflict now raging in Europe was that of a desire for commercial supremacy.

Is not the love of wealth as domineering and enterprising a passion as that of love of power or glory? Have there not been as many wars founded upon commercial motives, since that has become the prevailing system of nations, as were before occasioned by the cupidity of territory or dominion? Has not the spirit of commerce, in many instances, administered new incentives to the appetite, both for the one and for the other? Let experience, the least fallible guide of human opinion, be appealed to for an answer to these inquiries.

Citing a number of historical illustrations, he further says:

Have we not already seen enough of the fallacy and extravagance of those idle theories which have amused us with promises of an exemption from the imperfections, the weaknesses, and the evils incident to society in every shape? Is it not time to awake from the deceitful dream of a golden age and to adopt as a practical maxim for the direction of our political conduct that we, as well as the other inhabitants of the globe, are yet remote from the happy empire of perfect wisdom and perfect virtue?

So, Mr. President, entertaining the view that a republic could not be considered as exempt from war, however devoted the people of that republic might be to peace, and entertaining the view that in hours of danger there must be a centralization of power, so far as military action is concerned, the framers of the Constitution did not hesitate to centralize that power in the Chief Magistrate, and made him the Commander in Chief

of the Army and Navy of the United States. The right to command belongs to him, and can not be taken from him by any act of Congress. Next, they gave to Congress, acting for all the States, the power to raise and support armies, to provide a national force as distinguished from the local force known as the State militia. They said that—

The President shall be Commander in Chief of the Army and Navy of the United States, and of the militia of the several States when called into the actual service of the United States.

It has been said in this debate that the Constitution of the United States nowhere recognizes the State militia; that there is no recognition, as it were, of a national force and of a local force; but we have that clear and unmistakable recognition in part of section 2, Article II, of the Constitution, where they refer to "the militia of the several States when called into the actual service of the United States."

The framers of the Constitution, entertaining the views that they entertained with reference to the necessity of an undivided power and undivided responsibility in the hour of danger, would scarcely have done other than recognize as a local force that over which they permitted the local authorities to have any control whatever, and to provide another and a distinct force for the National Government as contradistinguished from the local force. If they had not regarded the militia as essentially a State force and always to remain such, except in the limited instances prescribed, they would not have consented to their being officered and trained by 13, now 48, separate authorities. They would never have regarded such divided authority in military affairs as other than fatal. But regarding the militia as a State force, and having provided an undivided authority for the national force, they consented to leaving the training of the militia to the States.

Mr. WILLIAMS. Mr. President—

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Mississippi?

Mr. BORAH. I yield.

Mr. WILLIAMS. In that connection, if the Senator will pardon me, does it not seem evident that inductively and historically, as well as deductively, his argument is sound, because this force, which is called by the Constitution not the militia of the United States but the militia of the several States, so as to exclude the idea of its being the militia of the joint States, was already historically a preexisting force, and existed long before the Federal Government was formed at all, as the militia of the several Colonies? So that, historically as well as deductively, the Senator must be right about that.

Mr. BORAH. I think the Senator is entirely correct in that respect.

Mr. WILLIAMS. In other words, the framers of the Constitution merely recognized an existing thing and connected it with the Federal Government for times of war.

Mr. BORAH. Precisely. The fathers found a State militia in each State. They left a State militia in each State, and they left with the States such vital and controlling power as will, in my judgment, always make it, for the purposes of war, ineffective except in a most limited way as a national force. On the other hand, they provided for a national force without permitting any limitation whatever to be placed upon it by the States, giving to Congress authority to raise and support armies and making the Commander in Chief the President of the United States.

What I desire to do to-day—and that is all I desire to do at this time—is to show that according to the Constitution there is a distinct, vital limitation upon the power of Congress with reference to the State militia, and that by reason of that limitation, which is vital and essential, the State militia never can be made an effective force in war or an effective force as a national organization. I want to show that the power of Congress over the militia is a limited power, and that by reason of that limitation the National Government can not do that which is indispensable in fitting the militia for service in times of national danger. I want to show that the powers left with the States are, from a military standpoint, preponderating and dominant, and that to spend vast sums of money on the State militia in view of these insuperable obstacles is to waste effort—to waste our funds so sorely needed for real effective preparedness.

I am not going, Mr. President, to-day at least to review historically the effect of this division of power with reference to the State militia as it has been demonstrated from the beginning of the Government until now. I do want to say, however, in passing that in presenting this question with reference to the ineffectiveness of the State militia to serve the National Government men should not be charged with assailing the personnel or the character of the men who constitute the militia.

It is no reflection upon them as men or citizens. It is a question of power, a question of constitutional authority which we ought to have the courage to heed. The position which I take in regard to it is that by reason of these provisions of the Constitution it never can be made an effective force in Federal affairs as a military proposition, and that being true it devolves upon us to account to the people for putting them in touch with the National Treasury. We should have a reason, a most vital reason, for spending fifty or sixty millions of dollars a year when already every form of taxation is harassing and annoying the citizen.

Looking at the provisions of the Constitution with reference to the State militia we find them entirely different in every respect with reference to power from those which relates to the national force. Among other things in Article I, part of section 8, it says:

The Congress shall have power \* \* \* to provide for calling forth the militia.

For what purpose? Not for all purposes. Not as Congress may raise and support an army, not as it may put in action the national force, but for three specific and well-defined, well-known, and recognized purposes only.

First, to execute the laws of the Union; second, to suppress insurrection; and, third, to repel invasion.

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

It has been said that the power of Congress over the State militia is the same as the power of Congress over the Army with the exception of the authority to appoint the officers and training the militia. We need not discuss many of the closer questions, what might be called the hair-splitting question with reference to the authority of Congress over the State militia. Let us deal alone with the vital and controlling constitutional powers. We have here the clear and unmistakable provision reserving to the States exclusively the naming of the officers and the training of the militia. These duties devolve upon and belong exclusively to the State. You can not purchase these reservations away from the State by putting the militia upon the pay roll. You can not go into the market and barter in constitutional power. You must get it from the Constitution without money and without price or you must forego its enjoyment.

Mr. BRANDEGEE. Mr. President—

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Connecticut?

Mr. BORAH. I yield.

Mr. BRANDEGEE. Will the Senator be kind enough to repeat the language about the militia organization which he has just read?

Mr. BORAH (reading)—

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress.

Mr. BRANDEGEE. Will the Senator let me ask him this question: The militia to which the Senator has just referred means the unorganized militia of the country, does it not—all persons liable to military service between the years of age as fixed by law? So when it speaks about governing such portion of them as may be put into the service of the United States it does not in anyway authorize the United States to summon the State militia to serve the United States Government. Is it the unorganized militia that Congress is directed to organize? Of course, there would be no sense in organizing the Organized Militia. It must refer to those subject to military service, does it not?

Mr. BORAH. I rather think not.

Mr. STERLING. If the Senator will permit an interruption, I should like to ask him if he thinks that that question is quite so broad? Does the Senator think that the constitutionally Organized Militia of the States may not, under this expression, be ordered into the service of the United States, although organized?

Mr. BORAH. I have no doubt about that.

Mr. BRANDEGEE. Can they be ordered into the service of the United States in time of peace simply for training?

Mr. BORAH. No, sir; they can not be ordered into the service of the United States except when the President of the United States decides it is necessary to have them there for the purpose of executing the laws of the Union, to suppress insurrection, or repel invasion. They remain as a State force at all other times, and the State alone can train them. Congress can

not train them. If the State declines to train them, Congress is powerless.

Mr. STERLING. Then, I should like to make this inquiry: If they may be ordered into the service of the United States for service in war, will not that solve some of our difficulties in considering that part of the bill relating to the National Guard? Will there need to be any new enlistment, for example? Will there need to be any contract with the General Government for service in the Regular Army? May they not as Organized Militia of the States be ordered into the service of the United States in time of war?

Mr. BORAH. I think so, if it is a war of invasion. However, I think that if we are going to put \$50,000,000 a year into the National Guard there ought to be something besides the mere right to order them in. They ought to be equipped and prepared to fight when they get in; and the point is that as long as the State appoints the officers and does the training that never can be true. Why it can not be I am going to discuss at another time. I am interested now as to legal questions only.

Mr. President, with reference to this clause appointing the officers and training the men, and as to the limitation of the authority of Congress over the subject, I read again from the Federalist, No. 29:

What reasonable cause of apprehension can be inferred from a power in the Union to prescribe regulations for the militia and to command its services when necessary, while the particular States are to have the sole and exclusive appointment of the officers? If it were possible seriously to indulge a jealousy of the militia upon any conceivable establishment under the Federal Government, the circumstance of the officers being in the appointment of the States ought at once to extinguish it. There can be no doubt that this circumstance will always secure to them a preponderating influence over the militia.

That number of the Federalist was written by Alexander Hamilton, who had pronounced ideas with reference to the rights of the National Government. He states, however, that so long as the officers are appointed by the States the State must necessarily at all times be the preponderating influence with reference to the State militia; and I shall undertake to show later by historic facts that that has always been true, and that in spite of any contract which you insert in this bill in the hour of crisis it always will be true. You can not change the Constitution of the United States by a contract between individuals or between the National Government and an individual. You can not change it by putting into this bill an oath to support the Constitution and laws of the United States and leaving out the oath to support the State law, from which the officer receives his commission. It is simply an attempt, futile, inexpedient in the end, to get around a plain provision of the Constitution. The fathers fully intended that there should always rest with the State the preponderous influence over this local force. The only way you can change it is to change the Constitution. It is idle to assume you can change all this by contracts or oaths or compensation.

Mr. CUMMINS. Mr. President—

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Iowa?

Mr. BORAH. I yield.

Mr. CUMMINS. I am not sure that I understood the Senator from Idaho a few moments ago with respect to that clause of the Constitution which provides substantially as follows:

And for governing such part of them as may be employed in the service of the United States.

Assume that Congress has provided for the organization of the militia, I care not what you call it, State militia or otherwise, does the Senator say that the Federal Government does not employ the militia when it prescribes the arming, the equipment, and the training? I rather understood him to say that they were not then employed by the Government of the United States.

Mr. BORAH. That is my view of it.

Mr. CUMMINS. When they are employed?

Mr. BORAH. When the President for these three reasons, or either of them, under the Constitution calls them into the service of the United States.

Mr. CUMMINS. So that if the Senator—

Mr. NELSON. If the Senator will allow me—

Mr. CUMMINS. I had not concluded my question.

Mr. NELSON. I simply wanted to supplement what the Senator said by stating that when they are called into the United States service they are mustered into the service.

Mr. CUMMINS. "Mustered" simply means account, as I understand it, in military phraseology. We do not advance very far by using the word "muster." I want to know if I clearly understand the Senator as saying that there is no Federal relation with the militia or the National Guard until the President calls them into active service for the purpose of enforcing the law, suppressing insurrection, or repelling invasion.



Mr. BORAH. The Senator says, "relation." That is a term of infinite scope. There is this relation, that Congress may previously prescribe the method of organizing, arming, and disciplining it. It may lay down the rule by which the officers appointed by the State shall train them, and if the National Government does not see fit to lay down the rule the State may lay down the rule. But I concede that in training the National Guard the discipline may be prescribed by the National Government before they are actually called into the service of the United States.

Mr. CUMMINS. What office, then, does the clause to which I referred play in the matter, "and for governing such part of them as may be employed in the service of the United States"? Does the Senator understand that when they are employed in the service of the United States the latter provision in the same section reserving to the States the power to appoint officers disappears?

Mr. BORAH. No; I do not so understand.

Mr. CUMMINS. Then when are they employed by the United States and governed by the United States?

Mr. BORAH. They may be governed in a limited sense by the United States without the United States appointing the officers. After the officers are appointed the President may call them into the service of the United States. They pass then under the direction and control of the United States, and the United States governs them and governs the officers who have been appointed by the State. In other words, after they are called into the service they pass under the control of the National Government and are a part of the national force.

Mr. CUMMINS. But the Senator understands they are not in anywise governed by the United States until they are called into the service for one of the three purposes named in the preceding paragraph of the Constitution.

Mr. BORAH. I do not know what the Senator means by "governed." You might say they are being governed in a sense because the Government had prescribed the organization and the method of disciplining them and arming them, but in the sense of controlling troops, directing troops, or using troops as they are called in, they are not under the direction of the United States until the President calls them in for one of these three reasons.

Mr. CUMMINS. One more question, and I shall not detain the Senator further. Then, after Congress has organized or provided for organizing them and for arming them and for disciplining them, as I gather, it is the view of the Senator from Idaho that Congress could not prescribe the length, for instance, of the service during any year or any period, nor the character of the camp service which might be required of the militia?

Mr. BORAH. Before they are called into the service of the United States?

Mr. CUMMINS. Before any effort is made to bring them in for the purpose of enforcing the law or suppressing insurrection or repelling invasion.

Mr. BORAH. That would depend entirely upon what it would be regarded. I think that that might come under the question of discipline.

Mr. NELSON. Will the Senator from Idaho allow me?

Mr. BORAH. I yield.

Mr. NELSON. I want to state that the term "muster into the service of the United States" received a practical construction in the days of the Civil War. We had our State regiments. I myself enlisted in a State company. Eight companies of the State militia were brought into camp together. We were there a month and by-and-by the United States mustering officer came there and made us take the oath over again, and we were mustered into the United States service. From that time on we were under the control of the Federal Government. Now, that is the way it operated during the Civil War with every militia regiment that appeared in the service. They were mustered into the United States service by a United States Regular Army mustering officer swearing them in, and then they became a part of the United States Army.

Mr. CUMMINS. If the Senator from Idaho will allow me—

Mr. BORAH. I yield.

Mr. CUMMINS. I defer to the broader knowledge of the Senator from Minnesota with regard to the meaning of the word "muster." I have a little knowledge respecting it from an Army officer. The Senator from Minnesota, however, describes an enlistment. Of course, when the Senator from Minnesota enlisted in the service of the United States he was mustered in as well, but at that time Congress had not exercised the authority given to it in the Constitution, and the company of which he was a member was not in the service of the United States. I assume it is hardly fair, however, to test what is here pro-

posed by what was done 50 years ago when Congress had not thought it necessary to employ the full power, as I view it, which it has under the Constitution.

Mr. BORAH. I want to support what I have said by calling attention to a few paragraphs from the case of *Houston versus Moore*.

This case was in part a construction of the act of 1792 and the act of 1795. I do not know about the act of 1792; but the act of 1795 was drawn under the direction of Mr. Hamilton, in contemplation of using the State militia in the riots which were at that time disturbing western Pennsylvania. I want Senators to bear in mind, not only the fact that it was drawn by one who had a pretty settled view as to the powers of the States and of the National Government with reference to the militia, but that the act of 1795 has been held by the Supreme Court to have exhausted the power of Congress under these clauses of the Constitution. Justice Washington, rendering the opinion of the court, said:

The Constitution declares that Congress shall have power to provide for calling forth the militia in three specified cases: For organizing, arming, and disciplining them; and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress.

The laws which I have referred to—

Referring to the acts of 1792 and 1795—

The laws which I have referred to amount to a full execution of the powers conferred upon Congress by the Constitution. They provide for calling forth the militia to execute the laws of the Union, suppress insurrection, and repel invasion. They also provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, leaving to the States, respectively, the appointment of the officers and the authority of training them according to the discipline prescribed by Congress.

This system may not be formed with as much wisdom as, in the opinion of some, it might have been, or as time and experience may hereafter suggest. But, to my apprehension, the whole ground of congressional legislation is covered by the laws referred to.

On page 23 it is said:

Upon the subject of the militia Congress has exercised the powers conferred on that body by the Constitution as fully as was thought right, and has thus excluded the power of legislation by the States on these subjects.

Justice Johnson, who rendered a separate opinion, says, as will be found on page 36:

Indeed, extensive as their power over the militia is, the United States is obviously intended to be made in some measure dependent upon the States for the aid of this species of force. For if the States will not officer or train their men, there is no power given to Congress to supply the deficiency.

Mr. President, there is no occasion to search for closer questions or for more difficult problems, because if the officering and the training of the militia are left with the States, and Congress can not intrude itself upon that power, then there is to my mind an insuperable difficulty in doing what we are undertaking to do, to wit, make the many State forces a unified efficient force such as we would require in any contest with a powerful foe. To say that a force which is officered by 48 different appointing powers and trained by the State at its will, or no, and that no influence of power can intrude upon that—to say that, is to establish once and for all the inefficiency of the State militia as a national force. Who would lead such a force into battle against the trained armies of Europe or Japan. It would be like the militia from the many States of Greece, meeting the troops of Philip which had been trained and disciplined under one eye—another Chæroneæ would tell the tale.

Mr. LEWIS. Mr. President—

The PRESIDING OFFICER (Mr. CHILTON in the chair). Does the Senator from Idaho yield to the Senator from Illinois?

Mr. BORAH. I yield.

Mr. LEWIS. I only want to call the attention of the able Senator to the fact that he will discover in that case a separate opinion of Mr. Justice Story, and in the opinion of Mr. Justice Story, the Senator will find a very interesting elaboration of the concurrent powers between the States and the Federal Government touching that very service, pointing out, I think, an answer to many of the opinions urged by the able Senator in his lucid argument. I did not know whether the Senator had time to notice that separate opinion; I might say the reversion to that particular subject, as it seems not to have been alluded to by either of the other justices rendering their opinions, or the justice rendering the opinion of the full court.

Mr. BORAH. I thank the Senator from Illinois. Justice Story renders an interesting dissenting opinion, and discusses, as the Senator says, the question of concurrent power; but the concurrent power which Justice Story discusses relates alone to the question of organizing, arming, and disciplining the

militia. He does not intimate that there is any concurrent power in the Congress and in the States with reference to appointing the officers or training the men. He does say, however, that if Congress should fail to provide a system of organization or of arming and disciplining the State could exercise that power, and do it itself; and in this respect the States and the Congress have concurrent power. But upon the other question, upon which I lay stress, with reference to the appointing of the officers of the militia, Justice Story concurs with the main opinion.

Mr. WILLIAMS. And as to the training of the men.

Mr. BORAH. And as to the training of the men.

Now, I want to read a paragraph from Justice Story, and this paragraph is not out of harmony with the main decision, but, even if it were a dissenting opinion, I think an opinion of Justice Story would be persuasive upon any question:

It is almost too plain for argument that the power here given to Congress over the militia is of a limited nature and confined to the objects specified in these clauses, and that in all other respects, and for all other purposes, the militia are subject to the control and government of the State authorities. Nor can the reservation to the States of the appointment of the officers and authority of the training the militia, according to the discipline prescribed by Congress, be justly considered as weakening this conclusion. That reservation constitutes an exception merely from the power given to Congress "to provide for organizing, arming, and disciplining the militia," and is a limitation upon the authority which would otherwise have devolved upon it as to the appointment of officers. But the exception from a given power can not, upon any fair reasoning, be considered as an enumeration of all the powers which belong to the State over the militia. What those powers are must depend upon their own constitutions—

That is the constitutions of the States—

And what is not taken away by the Constitution of the United States must be considered as retained by the States or the people. The exception, then, ascertains only that Congress have not and that the States have the power to appoint the officers of the militia and to train them according to the discipline prescribed by Congress. Nor does it seem necessary to contend that the power "to provide for organizing, arming, and disciplining the militia" is exclusively vested in Congress. It is merely an affirmative power, and if not in its own nature incompatible with the existence of a like power in the States it may well leave the concurrent power in the latter.

But when Congress has once carried this power into effect it is taken away from the States—that is, with reference to organizing, arming, and disciplining the militia. Farther on Justice Story says:

In considering this question it is always to be kept in view that the case is not of a new power granted to Congress where no similar power already existed in the States.

As was said by the Senator from Mississippi [Mr. WILLIAMS] awhile ago:

On the contrary, the States, in virtue of their sovereignty, possessed general authority over their own militia, and the Constitution carved out of that a specific power in certain enumerated cases.

And that is all that Congress undertook to do. The power over the militia, in the first place, belonged, of course, exclusively to the States to arm, organize, prescribe the discipline, appoint the officers, and to train them, but the Constitution sought to carve out of this general power the limited power of organizing, arming, and disciplining, which it may exercise concurrently with the States. Congress has that power, that limited and circumscribed power, carried out, and no more. With reference to the appointing of the officers and the training of the militia, in all other respects, except that of organizing or prescribing the organization and of arming and equipping, the power over the militia rests exclusively in the States. It is a State institution, but over this State institution certain limited authority is given; but it remains and must remain a State institution.

Let us see what the Supreme Court of Illinois said in a case dealing with this question. I will not read it all, because the Senator from Connecticut [Mr. BRANDEGEE] yesterday put it in the Record, but I want to read a paragraph or two.

Mr. LEWIS. Will the Senator kindly give the citation?

Mr. BORAH. It is the case of Peter J. Dunne against The People, Ninety-fourth Illinois. I read from the syllabus, but the body of the opinion will be found to support fully, in my judgment, the syllabus:

3. The Federal Constitution does not confer on Congress unlimited power over the militia of the several States, but it is restricted to specific objects enumerated, and for all other purposes the militia of the States remains subject to State legislation. The power of a State over its militia is not derived from the Constitution of the United States. It is a power the States had before the adoption of that instrument, and its exercise by the States not being prohibited by it, it still remains with the States, subject only to the paramount authority of acts of Congress enacted in pursuance of the Constitution.

5. There is no question of the power of a State to organize such portion of its militia as may be deemed necessary in the execution of its laws and to aid in maintaining domestic tranquillity within its borders. The power given to the chief executive of the State to call

out the militia to execute the laws, etc., by implication recognizes the right to organize a State militia.

9. It is for the legislature to determine of what number the active militia of the State shall consist, depending on the exigency that makes such organization necessary.

13. The organization of a State militia, when not in actual service, but for the purpose of training under the act of Congress, into divisions, brigades, regiments, battalions, and companies, shall be done as the State legislature may direct. When called into the national service, it is made the duty of the executive to organize the militia as the act of Congress directs.

Mr. SUTHERLAND. Mr. President—

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Utah?

Mr. BORAH. I yield.

Mr. SUTHERLAND. Has the Senator from Idaho any doubt that, if Congress should not act upon the matter at all and should not make any provision such as it is authorized to make under the Constitution, each State in the Union would have absolute power to provide for a militia, to organize it, and to provide the rules by which it should be governed? I ask the Senator from Idaho whether he does not think that the only purpose of the provision of the Constitution which authorizes Congress to provide for these things is that a uniform rule may be established by Congress?

Mr. BORAH. That is my opinion.

Mr. SUTHERLAND. It was deemed advisable that, so far as possible, the militia of the several States should be organized and disciplined in pursuance of a uniform rule. The power of Congress is simply to prescribe the rule, and then the States carry the rule into execution.

Mr. BORAH. I think that is the correct rule. Something has been said here with reference to the fact that that provision of the Constitution which forbids the States to keep troops in time of war might have some reference to this provision, but both the Supreme Court of the United States and the Illinois Supreme Court have decided that that has no reference to the militia at all.

Mr. SUTHERLAND. The very case to which the Senator has referred, the Illinois case, does that.

Mr. BORAH. That is true. Undoubtedly a State could proceed to organize, arm, and equip its own militia, and discipline it if the Congress of the United States did not provide for its doing so. It could do so upon its own motion, upon its own theory of organization and discipline, and the prohibition of the Congress with reference to maintaining troops would not at all militate against the right or authority of the State to do so.

Mr. CUMMINS. Mr. President—

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Iowa?

Mr. BORAH. I yield.

Mr. CUMMINS. What is the difference between a regiment called "militia" in service throughout the year and equipped in every way for war and "troops"?

Mr. BORAH. Well, Mr. President, in popular parlance there would be no difference at all; but there is a clear line of distinction between "troops" and "State militia" so far as the Constitution is concerned. The State militia are not troops under that provision of the Constitution.

Mr. CUMMINS. That is simply one decision, and probably it would not be accepted as absolutely conclusive of the question. I think there is in the popular mind a difference. I take it that in the word "militia" there inheres the thought of occasional service.

Mr. BORAH. That is generally the way the service is rendered.

Mr. CUMMINS. If a State has the power to organize militia—and that it would have the power to organize militia if nothing had been said in the Constitution I have no doubt whatever, and I think no one has ever doubted it—but suppose the State of Iowa came to the conclusion that it wanted a standing army and would call out its militia, organize its militia, arm the men who were organized, and keep them in the service precisely as the National Government now keeps the regular force in the service, does not the Senator from Idaho think that they would be "troops"?

Mr. BORAH. No; I do not.

Mr. CUMMINS. Then, how could we get troops in the State of Iowa?

Mr. BORAH. Well, the State of Iowa can not have troops in time of peace. It can have its citizen or civilian force; or, in other words, its militia.

Mr. SUTHERLAND. Mr. President, I suggest to the Senator that the distinction between "troops" and "militia" is that



the troops are soldiers, while the militia are citizens still in civil life.

Mr. CUMMINS. How long must citizens be soldiers in order to make them "troops"?

Mr. SUTHERLAND. I have not finished—when a man becomes a member of the State militia, he does not leave his occupation in civil life; he is still a doctor or a lawyer or a clerk. Those things constitute the usual occupations of the militia. A citizen simply becomes a member of the militia in order that he may take training and be ready to respond to the call of his State or, in a larger aspect, to the call of the Nation, and he does not become a soldier.

Mr. WILLIAMS. A professional soldier.

Mr. SUTHERLAND. He at no time becomes a regular soldier.

Mr. CUMMINS. Then we have no "troops" in the United States.

Mr. SUTHERLAND. He is still a citizen in civil life.

Mr. LODGE. We have none except in the Regular Army.

Mr. CUMMINS. They are not troops. A man enlists in the Regular Army for three years, and then comes out of the service, and is still a doctor or a mason in civil life.

Mr. WILLIAMS. But he has no other occupation while he is in the Army.

Mr. LODGE. While he is there he has no other occupation.

Mr. CUMMINS. Certainly not. If the Senator from Idaho will permit me, if a State were to organize a regiment of militia, enlist the militia for three years, and keep them in the service for nine months in each of the years, would not that regiment be troops?

Mr. SUTHERLAND. If the Senator will add to it that they are put into the military business in such a way that they become professional soldiers and abandon their civil occupations, I would say yes.

Mr. CUMMINS. We have no professional soldiers in the United States save the officers who enter the service for life. All others are volunteers, who enter for a specified time. This bill provides that any soldier of the Regular Army can leave it at the end of two years and enter a reserve force. To me the distinction that is made by the Senator from Massachusetts and the Senator from Utah is not understandable at all.

Mr. LODGE. But there is no power in the world where the men enlist for an indefinite period.

Mr. CUMMINS. Oh, I know that.

Mr. LODGE. And they are professional armies.

Mr. CUMMINS. They may be professional armies, but there can be a professional militiaman just as well as a professional soldier.

Mr. LODGE. Professional militiamen, as far as my experience goes, all have some other object. On an average, in the three years of their enlistment, they drill 90 hours.

Mr. CUMMINS. Very well.

Mr. LODGE. And the regular soldier is more occupied in his profession than that.

Mr. CUMMINS. Suppose a State should call in a regiment. It has the power to organize a regiment of militia. All the members of society are unorganized parts of the militia. From the time of attaining fighting age until the man dies he is a militiaman; he is a member of the unorganized militia. But when he enters the service I am trying to find out whether the distinction between the militiaman and the trooper is one of the length of service or one of the character of service, or just how, with a regiment of fighting men who have agreed to remain in the service for a year or two years, you can tell whether they are militiamen or troops.

Mr. SUTHERLAND and Mr. LEE of Maryland addressed the Chair.

The PRESIDING OFFICER. To whom is the Senator yielding? There are several Senators on the floor at the same time.

Mr. BORAH. I yield to the Senator from Utah.

Mr. SUTHERLAND. The distinction is, if the Senator will permit me to answer the question, in the character of the service which is rendered. A man may become a professional soldier if he has enlisted for a year or for three years. The length of time does not make any difference. While he is engaged in that occupation, that is his profession, and it is none the less a profession because he has voluntarily entered it. In other words, in order to be engaged in a profession a man does not have to be compelled to enter it.

Mr. CUMMINS. Mr. President, the difference is, as I understand it, that while he is fighting he is a trooper, but while he is preparing he is a militiaman.

Mr. SUTHERLAND. Not at all. He is a soldier while he is preparing.

Mr. BORAH. Mr. President, the Senator from Iowa would not contend, I presume, that a State could not maintain a militia in time of peace.

Mr. CUMMINS. No, Mr. President; I do not so contend.

Mr. BORAH. The Constitution forbids a State from keeping troops in time of peace.

Mr. CUMMINS. I was trying to find out, however, whether there is any conflict between the various phrases used in the Constitution. We all know that they are not always reconcilable. The clause of the Constitution to which the Senator has just referred says that a State may keep troops without the consent of Congress in the event of war. In the event the State goes to war, in the event of an invasion of the State, the State can keep an army; and I do not know how it could organize the army except under its power to call out all of its citizens to defend it.

Mr. BORAH. Does the Senator contend that a State in time of peace may not maintain a militia?

Mr. CUMMINS. No; I do not.

Mr. BORAH. Then, what will he do with the provision of the Constitution which forbids a State to keep troops in time of peace?

Mr. CUMMINS. I say, I was asking the Senator to reconcile those statements, to explain the difference between the troops. Mr. BORAH. There is a difference, evidently. The Constitution recognizes a difference, because it provides for the States maintaining a militia, or concedes their right to maintain a militia, and yet it prohibits them from maintaining troops in time of peace.

Mr. CUMMINS. The Constitution does not say anything about the States maintaining a militia. It is simply silent on that question; and I assume that unless the States granted the whole power—

Mr. BORAH. Being silent, it is just the same as if it authorized it, so far as practice is concerned, because, being silent, the States may maintain a militia. It was an original power, and the Constitution does not prohibit its use.

Mr. CUMMINS. No; the States had the power to do so, and I assume, with some little doubt upon my own part, that the States did not part with the power to organize a militia; although it could be very well argued, as the Senator knows it has been argued, that the grant of power to the Congress of the United States to organize the militia was exclusive, I do not think so, and I do not contend so. Nor is it material to any question that we are considering here to determine that delicate point.

Mr. BORAH. The Constitution says the President shall be Commander in Chief of the Army and Navy of the United States and of the militia of the several States. Not only do we have the fact that the power originally belonged to the States, but we have here written into the Constitution the recognition of the fact that there shall be State militias there to be called into action, and that a State may maintain a militia in time of peace. But afterwards the Constitution says that the States are prohibited from maintaining troops in time of peace. So the Constitution clearly recognizes that there is a clear distinction between troops and the State militia.

Mr. CUMMINS. I do not deny that. I was trying to find out what the difference is and when the militiaman might become a professional soldier.

Mr. BORAH. I will read a paragraph from the case of Dunne against The People upon that point, so that it may go in the Record:

The States are forbidden to keep "troops" in time of peace; and of what avail is the militia to maintain order and to enforce the laws in the States unless it is organized? "A well-regulated militia" is declared to be "necessary to the security of a free State." The militia is the dormant force upon which both the National and State Governments rely "to execute the laws, \* \* \* suppress insurrections, and repel invasions." It would seem to be indispensable there should be concurrent control over the militia in both governments within the limitations imposed by the Constitution. Accordingly it is laid down by text writers and courts that the power given to Congress to provide for organizing, arming, and disciplining the militia is not exclusive. It is defined to be merely an affirmative power and not incompatible with the existence of a like power in the States, and hence the conclusion is the power of concurrent legislation over the militia exists in the several States with the National Government.

Mr. CUMMINS. Mr. President—

The PRESIDING OFFICER. Does the Senator from Idaho further yield to the Senator from Iowa?

Mr. BORAH. Yes.

Mr. CUMMINS. I should like to reduce this argument, if I can, to the real issue, for I recognize the justice and the soundness of a large part of the argument of the Senator from Idaho. Standing as I do for the provisions of this bill in favor of the National Guard, I do not want it assumed that we are on our side disputing a large part of the argument which has just been

submitted by the Senator from Idaho. I return to one question which I propounded a short while ago.

First, let me say that we do not question or doubt that in time of peace the State has the absolute power to appoint the officers of the militia or the National Guard, and that inasmuch as men can be trained only by officers, they must be trained by the officers appointed by the State. I agree, at any rate—I do not want to bind anyone else by the admission—that we can not affect that power on the part of the States; and I agree further that if a State should refuse to appoint or make provision for the appointment or selection of officers of the militia during a time of peace, the Federal Government could not supply that omission on the part of the States.

So far, I agree with the Senator from Idaho. But, as I understand the Senator from Idaho, he goes further and says that in time of war, when the President, under the authority of Congress, calls the National Guard into the fighting service of the United States, then the State still has the power to appoint the officers of the organization so called in; and that if, in such an event, the State were not to appoint or select, the organization would be without officers, and that the Federal Government could not appoint officers in that contingency.

That is the point that is interesting, because, if that is true, then the conclusions that have been stated by the Senator from Idaho have great force; but I have never believed, and do not now understand, that that is the proper interpretation of the Constitution.

Mr. BORAH. Mr. President, I have not gone to the extent which the Senator seems to think I have with reference to the power of the National Government to govern the force after they are called into the service, because I do not think that is a vital question here. What I maintain is that if the National Government can not appoint the officers and can not enforce the training by the officers, as a military proposition it is a totally defective organization for the purpose of national defense; that it will be too late after they are called into service to do that which it was essential to have done before they were called into the service in order to make them efficient. Unless Congress can go further than is conceded by the Senator in the way of controlling the officers or initiating the training, the troops will never be fitted for the service which they will be called on to perform. They will be just the same as volunteers. If the training is not proper or is not made at all, it would be just the same as if we called so many volunteers. So, as to whether or not they shall be fitted at all is the conceded proposition here, with the statement—

Mr. CUMMINS. That, of course, is a question of fact and not of law, and can be determined only by looking over the situation and observing what the National Guard is, what its officers are—I mean their competency—and whether they are actually training men so that they will be fit for the Federal service.

Mr. BORAH. Exactly; but suppose the National Government looks over the situation and finds that the officers are not fitted and that they are not training, what is the Congress going to do about it? It can not do anything. So you fall back upon the proposition that on the vital question of fitting these men for service the Congress is powerless, and, in the view of all the authorities that I have been able to examine upon military tactics or military questions, that is a vital proposition.

The very object of putting these men in touch with the National Government is to have them properly trained, and to have them advance beyond the condition of the ordinary citizen in military capacity; and if Congress has not the power to enforce it, why should we undertake to legislate to that end? If this can not be done effectively, completely, how dare we rely on the militia? In these times, sir, we want no broken reed in the hour of peril. Above all, we do not want to spend millions upon any system that can not be relied on, and relied on with safety when the ordeal of battle comes. Our expense for preparedness will be burdensome, and in the name of justice, in all fairness to the overburdened taxpayers, let us not put any burden on them that is not essential and worth to them every dollar it costs.

Mr. LEE of Maryland. Mr. President—

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Maryland?

Mr. BORAH. I yield.

Mr. LEE of Maryland. The Senator has been so amiable in submitting to interruptions that I should like to note, for information, an exception to his constitutional argument on the ground that in case of absolute failure of the States to regulate the militia according to the discipline prescribed by Congress, Congress would be helpless. I am under the impression that the power to enforce that discipline is clearly one of the

implied powers of Congress, and absolutely covered by McCullough against Maryland. I will read that to the Senate at a later time; but before going on with this suggestion, I should like to ask the Senator a question in respect to this provision in section 8 of Article I of our Constitution, "reserving to the States, respectively, the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress." Do I understand the Senator to maintain that the words "according to the discipline prescribed by Congress" do not apply equally to the appointment of the officers and the authority of training?

Mr. BORAH. Unquestionably they do not. If they had, there would have been no reason in the world for the Constitution making that exception. But I am interested that a southern Democrat should go further than a northern Republican on the question of implied power. I have never understood that the implied power under the Constitution went so far as to abrogate a specific provision of the Constitution to the contrary. Here the Constitution expressly reserves to the States the power to appoint officers and to train the militia. Now, the Senator would render that specific provision nugatory under the doctrine of implied power. "Verily the old order changeth."

Mr. LEE of Maryland. I do not concede that there is any specific provision to the contrary. The obligation imposed on Congress is to provide a discipline, and it should see to the enforcement of the discipline that it has the right to provide. Otherwise, the providing of the discipline would be an absolute nullity, a mere idle waste of words.

Mr. BORAH. It is, in practical effect, if the State does not see fit to train.

Mr. LEE of Maryland. So the Senator would render it.

Mr. BORAH. This provision of the Constitution is to the effect that the power to appoint the officers and to train the men is expressly reserved to the several States. Now, certainly no implied authority could in any way affect that authority or that right.

Mr. LEE of Maryland. That right or reservation is all qualified by the following words: "according to the discipline prescribed by Congress," and that is what the Senator wants to get rid of.

Mr. BORAH. Exactly; "according to the discipline prescribed by Congress." But if the Senator were correct in the proposition, all the Constitution would have said would have been that the Congress had power to organize, arm, and discipline the militia. If it had been intended by the fathers, as the Senator contends, that the discipline should also cover the officers, they would not have specifically carved out and excepted from the matter of governing an army and disciplining it the matter of appointment and of training. So they took that out of the matter of discipline. That feature of discipline can not be exercised by Congress. That feature of organization can not be exercised by Congress. That part is reserved to the States specifically. Otherwise it would belong to Congress by reason of the authority to discipline the Organized Militia.

Mr. LEE of Maryland. The Senator's argument, then, in that connection simply cancels that provision, "according to the discipline prescribed by Congress."

Mr. BORAH. No; it does not.

Mr. LEE of Maryland. It simply cancels those words.

Mr. WILLIAMS. It depends on what the word "discipline" means.

Mr. BORAH. Exactly. They appoint the officers and do the training. They do the training according to the discipline. But suppose the State does not want to train at all—what are you going to do about it?

Mr. LEE of Maryland. I think the Congress can enforce its discipline by appropriate legislation, and I think that power to enforce is clearly an implied power under McCullough versus Maryland.

Mr. HUGHES. Where are you going to get it?

Mr. BORAH. Let me read, in that connection—

Mr. CUMMINS. Before the Senator goes into that subject—

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Iowa?

Mr. BORAH. Just let me read this, first:

Indeed, extensive as their power over the militia is, the United States are obviously intended to be made, in some measure, dependent upon the States for the aid of this species of force. For if the States will not officer or train their men there is no power given to Congress to supply the deficiency.

Mr. HUGHES. What is that from?

Mr. BORAH. That is from the case of Houston against Moore.



Mr. CUMMINS. Mr. President—  
The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Iowa?

Mr. BORAH. I do.

Mr. CUMMINS. The Senator from Idaho has referred very often to the views of Alexander Hamilton. Has he examined the message to Congress delivered by George Washington in 1795? I assume that it reflects Hamilton's views.

Mr. BORAH. I have no idea whose views it reflects other than its author's, but I have examined it.

Mr. CUMMINS. I beg to read a sentence from it:

In my opinion Congress has the power, by the proper organization, disciplining, equipment, and development of the militia to make it a national force, capable of meeting every military exigency of the United States.

If Hamilton had as much influence in this message as he had ordinarily over the public utterances of the first President of the United States, I suggest that the fathers, at least, believed that the militia could be made a national force. When Patrick Henry, who was rather a great man in his time, was opposing the ratification of the Constitution in the Virginia convention, he said this about the militia:

As your militia is given up to Congress, all power will be in their own possession.

He then quotes another paragraph of the Constitution, and says:

By this, sir, you see that their control over our last and best defense is unlimited.

So our constitutional literature is not without some reference to the efficiency of a National Guard.

Mr. BORAH. The best authority just now against Patrick Henry is the Senator from Iowa, in his statement a few moments ago, in which he showed that Mr. Henry was thoroughly mistaken in the admission of the fact that we have the absolute power to appoint officers and do the training, and if we do not train them nobody can. Certainly, if that be true, the great orator was in error in supposing that the control of Congress was unlimited. We owe much to Patrick Henry for his eloquence and his patriotism; but time has shown his fears to have been ungrounded, and the Supreme Court of the United States has shown his view of the Constitution to have been unsound.

Mr. CUMMINS. I rarely quote Patrick Henry unless he is on my side.

Mr. BORAH. But the difficulty here seems to be that he is not on the side of the Senator. The position the Senator takes is that there is no power in Congress to name the officers and train the militia.

Mr. WILLIAMS. If the Senator from Idaho will pardon me, a good deal of this argument has grown up out of a difference of opinion as to what the word "discipline" means.

Mr. BORAH. It seems so.

Mr. WILLIAMS. The word "discipline" is defined as instruction; training. It is defined as drilling. That is what it means. The State prescribes the tactics, whether it is Hardee's or Upton's. That is what is meant by discipline.

Mr. BORAH. In addition to that, Congress has put a construction on that clause of the Constitution in accordance with that definition.

Mr. CUMMINS. The Senator from Idaho imputed to me an opinion a moment ago that I think I have not expressed. I believe that the States have the power, and the exclusive power, to appoint the officers of the militia until the militia enters the employment of the United States. I might not agree with the Senator from Idaho as to just what constitutes employment by the United States. He is of the opinion—and I have not disputed it up to this time—that the militia enter the employment of the United States only when they are called into service to accomplish one of the things mentioned in the preceding paragraph of the Constitution, while I think it may be fairly contended that they can be called into the employment of the United States for the purpose of preparing them to do the things which the Constitution names in the preceding paragraph.

Mr. BORAH. Let me ask the Senator a question in order that we may get down to the real issue. The Senator concedes that the States have exclusive power to appoint the officers. Suppose the State does not see fit to train the militia, has Congress power to train the militia?

Mr. CUMMINS. I do not want to answer that question. It is an exceedingly doubtful one, and I do not think it inheres or is material to any proposition I have made or shall make with regard to the bill, and especially the pending amendment.

Mr. BORAH. Mr. President, I am just about to conclude, and I will conclude by saying that it seems clear that under the Constitution, and according to the authorities which have undertaken

to construe the Constitution, this at least may be regarded as well established: First, that the appointment of the officers is exclusively under the control of the States; and, secondly, that the training of the militia is exclusively within the authority and under the control of the States; that if the State does not see fit to appoint officers the Congress of the United States can not compel the State to do so; that if the State does not see fit to train the militia the Congress of the United States can not compel the State to do so. There have been historic illustrations, but of those I am not going to speak now. There is another feature of this National Guard matter which I want to discuss later. But those two propositions as legal propositions under the Constitution seem to me beyond peradventure well established. But just a word with reference to the quotation from Washington's message to Congress, upon which the Senator justly lays stress. No doubt both Washington and Hamilton entertained a hope that the act of 1795 would work out successfully. But the Father of his Country did not live to see his hopes dashed to earth in the War of 1812. But that does not relate to the legal proposition, and I propose to take this and other more serious questions up in a later discussion.

Mr. LEWIS. Mr. President, unless I am taking up time that some other Senator would like at this particular time to occupy, as I am not anxious to proceed at any particular hour, I would like permission to say a few words touching this proposed amendment and what I regard to be the attitude of this bill toward the States' guard militia.

There seems to have been in this country something of a general fear addressed against the organization of the Army and also against the State guards. There is very generally, Mr. President, through the country, I think, a mistaken idea as to the offices to be performed by both the Army and the guards. They are not enemies of our country or opposed to the freedom of our people.

I heard the distinguished Senator from Minnesota [Mr. NELSON] expressing in commendable terms his condemnation of that general spirit pervading in different parts, indeed, I may say the whole, of the Republic, opposing any form of force or defense as militarism. Just now that spirit seems rampant and to pervade sections of the country where least we were to expect it and where the reputation for intelligence, it is assumed, would have long avoided it.

In the casual writings of Heine there is a very interesting observation produced by him to point a moral. He speaks about an oriental country where there was a judge of a court who was called upon to pass a judicial decision between two conflicting contenders for some interest, and, not liking the looks of the individuals, he committed the decision to his daughter. She heard the full case and she went to her father to report. Heine relates that the old judge asked her, "Well, what do you think of the justice of their case and which do you think is right?" She responded, "I do not know which is right; I only know that both stink." In the general estimation of a class of people throughout this country there is an assumption that the very organization of any form of military protection is a stink in the nostrils of democracy and is obnoxious to the whole spirit of justice in a republic.

For myself I can not take either of these views. What this country needs just now can be put in a single phrase. It is an army that is a sufficient army. Its States need a complete and efficient organization under the privileges of its National Guard or militia.

The danger we have is that under the general excitement prevailing in certain quarters we may go to such an extreme of militarism as to arouse the fear and aversion of a certain class of people who lack a complete understanding of what our objects are and defeat through misapprehension the very purpose of our undertaking. Or, on the other hand, we may go to the other extreme and, yielding to these fears and this aversion, fail to do anything that is necessary to the demand of the hour upon the country.

I occupy rather a difficult situation, measured by my estimate of my own position. I am not able to agree with any measure in toto which has been presented to either body. I have studied both bills, that from the House, designated the Hay bill, and that coming from the Military Committee of the Senate, designated the Chamberlain bill.

Mr. President, at the outset let me confess a prejudice, well to be understood in order that my fellow Senators may measure properly my hostility—at least keep in view what it is that influences me.

I am strongly prejudiced in favor of the National Guard. I am strongly an advocate of a State force to be kept and equipped for the purposes of local welfare as well as national defense. I have been a member of the Guards, in some form or other,

since I left my schooling. I have been an officer of the Guard, in some form or other, all my manhood life. I am now and have retained this position, and it may be that those affectionate associations, inspired by the endearing experiences that a man has year in and year out, cause me to see these agencies in a more flattering light than others far removed from personal association may view them. I have observed a tendency in this Government at every opportunity that could arise to minimize the value of the State National Guard, and in some instances to macerate them out of existence.

This bill, to my thinking, works a great injustice to every State in the Union, and, to my opinion, robs the States to a great extent of that force essential to our Government, a force within a State for the purpose of repelling invasion against that State as well as to protect that State from those disorders which may suddenly arise within a State due to its local situation. This is a condition so seldom understood and never wholly appreciated by other States many miles removed.

I have been interested in the argument of the Senator from Idaho [Mr. BORAH]—and I have been attracted by the different suggestions made to him by other Senators as the argument has proceeded—upon the distinction between the power of the Federal Government over the Army and the power of the National Government over the militia.

Mr. President, there are two things it is well to clear up in the beginning. There is a distinct difference between militia and the National Guard. The militia, under the wording of the Constitution, merely means that which is meant under the English definition. Having used governmental words in those days, which were the words of the common law or English statutes—words defining things and status which had existed in England previous to our coming into existence, it must be assumed that we used them in the same sense they were employed by those from whom we adopted them. So the word "militia" in the Constitution means that body of men from whom may be organized a distinctive force, but who, not being so organized, are "the militia," as distinguished from the organized force called "the Army."

Under the laws of England before our coming into existence, as is well remembered by the able lawyers representing their different States here in the Senate, as long ago as King Athelstane in Kent, they organized each locally a form of militia. This was adopted, it is very interesting to remark, from the ancient governments of which they had some reading and not much knowledge. It came from a series of institutions prevailing in Rome. The Gauls landing in England brought with them some such form of the government of the land from whence they came. Part of England, not desiring to accept the imperial form of Rome, rather reverted, as did the Southern States of the United States, together with New England, to the Grecian theory. They declined to accept a form of organization that extended from border to border, and they adopted the Grecian theory of organizing in each locality some form for its own separate protection in the event that one of its neighbors, for offenses real or imaginary, should attempt to invade it or to make war upon it.

The word "militis" passing, of course, from the Latin into the English, took its shape rather into the word "militia," which had no other object than merely defining those who could do military service.

Therefore I say to my eminent friend from Idaho [Mr. BORAH] that I think the distinguished Senator from Iowa [Mr. CUMMINS] and himself did not pause to reflect upon that, which reflection would so readily have restored them to the real definition of the word as used in the Constitution. The right of a State to keep a militia was intended to mean the privilege of a State to recognize that class of individuals who may bear arms, and thus it added the other words reading, "a well-organized militia." Consequently, when the provision is against the State keeping troops, that meant that it should not organize an army as an army within itself that might be used as an army opposed to the National Sovereignty, but "organized militia" meant that it should always keep itself, if it chose, in such a condition that its militia could be organized at any time for the purposes of national defense, but never to be kept as a separate army under the State sovereignty as distinguished from the General Army under the Nationality.

Therefore, while it does appear on the face of the Constitution an interesting inconsistency, difficult for the most eminent lawyers to reconcile, yet upon reading something of the history of our country we will readily see there is no real inconsistency, if we will divorce the word "militia" and the application of it from what is generally termed the National Guard. Therefore, the Organized Militia becomes a National Guard or the Organized Militia may become the Army.

Now, Mr. President, I wish to call attention to the fact that it is not at all inconsistent with the provisions of the Constitution that the Federal Government should exercise or should assume to exercise a control over the National Guard. In so far as the national defense is concerned the assumption on the part of our learned and excellent friend from Idaho, voicing the view, I dare say, held by many able Senators, that we have no control over the officering or the disciplining of the National Guard fails in this point. That particular provision of the Constitution cited by him is limited to the officering and the discipline of the National Guard while they remain a distinct State force, but the very moment any condition arises that calls for this force to be exercised in behalf of the national welfare the right then of discipline or officering is promptly vested in the very power that is authorized to call them into existence for national uses.

So we see that there is no inconsistency there, because if there were left in the power of the President of the United States the right to officer the guard of the State of Michigan, the State of Pennsylvania, the State of Illinois, or the States of Iowa or Idaho while in time of peace contemplate what would follow. That officering of their force could come from any source in the world, there being no law to compel the officer to come from the State of North Carolina if it is the guard of North Carolina, from South Carolina if it is a South Carolina guard, or from Michigan or from Idaho, we would soon have a condition which our fathers inveighed against when in the Declaration of Independence, a general expression of their grievances, they spoke of the "foreign soldier" who had been quartered upon the soil and at their doors.

If the President of the United States in time of peace could officer the guards, it would be quite apparent that he could officer them from any source whatever; that he could send men to take charge of them who bore not the slightest relation of kindness to them, who knew neither their families, nor their needs, nor their geography, nor their environment, and would use them upon any state of circumstances according to his whim or profit or which served his particular object, though that object might be indeed removed far apart from the just needs of the hour.

So you can see, I am sure, Mr. President, that there is a great deal of wisdom in that provision of the Constitution which limits the officering and the discipline of the guard in time of peace to the State wherein it is organized.

The able Senator from Idaho called attention to the opinion in the Fifth Wheaton, a case well reasoned out, and, as the able Senator from Idaho pointed out, rather replete with separate opinions, and to that extent indicating a very great interest in the question involved. The question involved at that time was, of course, the limit of the Federal Government over the National Guards in time of peace and the limitation of the State government over a Federal force in time of war. One of the observations of that opinion impresses me as of vast interest. It is the individual opinion of Mr. Justice Story. My learned friend, the able Senator from Idaho, in using the words "dissenting opinion," I am sure happened not at that particular time to realize that it was not dissenting, he, no doubt, meaning individual; but the opinion is not dissenting. It is a separate opinion, and Mr. Justice Story has an observation that is interesting. He says of the general policy:

But the exception from a given power can not, upon any fair reasoning, be considered as an enumeration of all the powers which belong to the States over the militia. What those powers are must depend upon their own constitutions, and what is not taken away by the Constitution of the United States must be considered as retained by the States or the people. \* \* \*

If Congress should not have exercised its own power, how, upon any other construction than that of concurrent power, could the States sufficiently provide for their own safety against domestic insurrections or the sudden invasion of a foreign enemy? They are expressly prohibited from keeping troops or ships of war in time of peace, and this, undoubtedly, upon the supposition that in such cases the militia would be their natural and sufficient defense.

Showing to my eminent friend from Idaho that distinction between troops and militia is clearly recognized by the courts along the line I assumed to point out a moment ago in my argument on this question.

Mr. BORAH. Mr. President—

Mr. LEWIS. I yield to the Senator.

Mr. BORAH. I think the Senator from Illinois is in error as to its not being a dissenting opinion.

Mr. LEWIS. If the Senator from Idaho, having the volume before him, says it is a dissenting opinion I have then forgotten that it is dissenting, being under the idea that it was an individual opinion.

Mr. BORAH. Justice Johnson rendered an individual opinion; but Justice Story rendered a dissenting opinion, holding



that the act of the Legislature of Pennsylvania was void while the court held that it was valid.

Mr. LEWIS. It may be, Mr. President, but what I wish to call the Senator's attention to is this particular phase of reasoning. Mr. Justice Story, however, is not combated, as I recall it, by any other of the writers of opinions.

Mr. BORAH. I agree with that proposition.

Mr. LEWIS. Therefore I wish to say to my able friends my judgment is this: The only judicial declaration we have in construing that act seems to be this: The concurrent jurisdiction of the State with the Federal Government over the militia gives to the Federal Government the organization and discipline of the militia in any manner touching the national defense concurrently with the State. That being therefore established, as I see it, I am unable to see that there is that barrier which Senators have heretofore apprehended against the National Government federalizing the State guards to the full extent necessary for national defense, without, however, abrogating or repealing the National Guards in their complete and sovereign existence for the welfare of the State and its State defense.

Now, Mr. President, we get some idea from a later opinion, to which I invite my learned friend's attention. I invite the Senator's attention to the case that came up growing out of a court-martial. I read also from Mr. Justice Story in Twelfth Wheaton, following the Fifth. I invite attention to some observations in this opinion as indicating to my mind that the court in this case finally yields to Mr. Justice Story's conclusions in the Fifth Wheaton, and it seems to yield to his line of reasoning. If I were before a court, I would assume to argue as follows: That in the former case, the opinion being dissenting, as my able friend says, but in the matter to which I allude separately, to which there was no dissent, subsequently, upon further consideration, this same justice had his views adopted in so far as these particular matters to which I am alluding were concerned, and then such became the full opinion of the court on that subject. I shall read.

This is a military case. The militia of New York is called out for some uses. The militia declines in the State of New York to obey the court. They are proceeded against and these particular officers in disobedience court-martialed. They make the point that they are not subject to the Federal Government, seeking to take favor under Fifth Wheaton. They contend that they were not a national force and are not the subject of a court-martial by the National Government. That they are distinctly a State force, and as there was no insurrection, no national war, it was not in the power of the United States Government to court-martial them because these particular officers assumed in their judgment to differ from the President of the United States, who had decided there was some war imminent, and in that respect thought to call the militia into action. I read but one or two paragraphs for the purpose of accentuating the position which I feel free to take. I ask my able friend from Idaho, who is an excellent lawyer, as well as an eminent Senator, as to his construction of the case in Fifth Wheaton, drawn from these observations to be found now in the subsequent opinion of Twelfth Wheaton. In this opinion Mr. Justice Story says:

For the more clear and exact consideration of the subject, it may be necessary to refer to the Constitution of the United States and some of the provisions of the act of 1795. The Constitution declares that Congress shall have power "to provide for calling forth the militia, to execute the laws of the Union, suppress insurrections, and repel invasions"; and also "to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States." In pursuance of this authority, the act of 1795 has provided, "That whenever the United States shall be invaded, or be in imminent danger of invasion from any foreign nation or Indian tribe, it shall be lawful for the President of the United States to call forth such number of the militia of the State or States most convenient to the place of danger or scene of action as he may judge necessary to repel such invasion, and to issue his order for that purpose to such officer or officers of the militia as he shall think proper." And like provisions are made for the other cases stated in the Constitution.

Then comes some matter which is unnecessary for the purpose of my point. The court, proceeding, says:

It has not been denied here that the act of 1795 is within the constitutional authority of Congress or that Congress may not lawfully provide for cases of imminent danger of invasion, as well as for cases where an invasion has actually taken place. In our opinion there is no ground for a doubt on this point, even if it had been relied on, for the power to provide for repelling invasions includes the power to provide against the attempt and danger of invasion, as the necessary and proper means to effectuate the object. One of the best means to repel invasion is to provide the requisite force for action before the invader himself has reached the soil.

Carrying out the idea that in the States these forces were intended to be disciplined and equipped for the purpose of repelling invasion. Then the court, proceeding, says:

If the power of regulating the militia and of commanding its services in times of insurrection and invasion, as it has been emphatically said they are—natural incidents to the duties of superintending the

common defense and of watching over the internal peace of the Confederacy—

This is a quotation from the Federalist, which, I assume, the able Senator had before him. Then, the court continues:

These powers must be so construed as to the modes of their exercise as not to defeat the great end in view. If a superior officer has a right to contest the orders of the President upon his own doubts as to the exigency having arisen, it must be equally the right of every inferior officer and soldier; and any act done by any person in furtherance of such orders would subject him to responsibility in a civil suit in which his defense must finally rest upon his ability to establish the facts by competent proofs. Such a course would be subversive of all discipline and expose the best disposed officers to the chance of ruinous litigation. Besides, in many instances the evidence upon which the President might decide that there is imminent danger of invasion might be of a nature not constituting strict technical proof, or the disclosure of the evidence might reveal important secrets of state, which the public interest, and even safety, might imperiously demand to be kept in concealment.

I conclude with a single paragraph:

The act of 1795 is not confined in its operation to cases of refusal to obey the orders of the President in time of public war.

Yet I am sure the Senator will agree with me that that expression seems exceedingly foreign to all the views the court had uttered in the case in Fifth Wheaton, and directly contrary to all views we have been educated to in this body as matter of law—that is, that the President of the United States has no power over an officer of the State militia in time of peace, and yet this observation from Justice Story, speaking now for the full court, apparently, along the line of his observation when he rendered his dissenting opinion in the same case and his separate opinion on another branch—we now find him asserting the same doctrine, apparently, with the concurrence of the court that had previously differed from him. I read as follows:

The act of 1795 is not confined in its operation to cases of refusal to obey the orders of the President in times of public war. On the contrary, the act authorized the President to call forth the militia to suppress insurrections and to enforce the laws of the United States in times of peace.

Mr. President, I think I have indicated sufficiently, at least for the point I wish to make, that there is a power in the President of the United States over the militia in time of peace, which does authorize him concurrently with the States to supervise the organization, the officering, and the disciplining, and that the observations in the former case, read by the able Senator from Idaho, seem to be at variance with what seems to be the spirit of the later decision and what seems to have been since then something of the practice.

Mr. President, having made that assertion, I now wish to make manifest my object. The time has come when this Government must recognize that the militia or the National Guard organized in different States, to become effective for any purposes whatever, must have the concurrent cooperation of the Federal Government. This cooperation must be by the furnishing them with implements, accouterments, supplies, and opportunities. Without these the guard, however patriotic in their individual character, would be useless to the National Government. Why? The eminent Senator from New York [Mr. WADSWORTH] called attention to the general position of this bill touching such of its features of organization and to the situation of the National Guard of New York.

In a State such as New York, where the guard is brought up to a very high degree of efficiency, supported by the State—and I might add Pennsylvania, Illinois, and other States, but I am now speaking only in illustration—in such a State you could expect from the guard cooperation with the Federal Government of its own volition, because it is able to do so; but in States where the income from taxation has been limited and the amount committed to the treasury has been curtailed, so that expenditures in behalf of the guard have been most limited indeed, and where unjust prejudice has prevented their growth, there would be no money for their existence; and unless the National Government should go into such States and render them aid, that there may be uniform provisions, there would be no guard within such States kept up to such efficiency as would be of any value or service to the National Government in the hour of insurrection or of war.

Therefore it must be seen clearly that the power of concurrent jurisdiction is justified by the courts; it must be seen clearly that it is justified by the Constitution; and it must seem to be a very natural power, in order that we should have a uniform defense and a uniform force to accomplish that purpose.

Mr. President, what I wish to speak of particularly is that this bill, as I see it, fails to recognize that the National Guard should be a separate force for its State uses; it fails to recognize the great fact that the guard is a State body which exists; but, to the contrary, I am forced to the conclusion that there is not a due regard for either the uses of the guard in the past or their needs for the future, but that this bill, out of some spirit mysterious to me, conscious as I am of the patriotism of the



men who constitute this committee, has visited an affront upon that force that has remained the force of defense and sustenance of this Government in times of its greatest peril, and which at other times, sir, has been forced to endure hardships that could not be described, miseries beyond the tongue's depiction, and insults and affronts from conditions around them that ought never to have been visited upon the meanest citizen of our country, and far less upon one who tenders his life for the liberty of his country.

Now, in an hour when we have weaned many away from the prejudice of the National Guard and brought closer relation to the National Government, with the consent at least of the majority of our countrymen, by which that concurrent power of supervision and control may be exercised, there is disclosed on the part of the committee a spirit that seeks to ignore the National Guard. I think I shall be able to point out in a few words, at least to those gentlemen who have a feeling such as I have—a feeling on behalf of the guard to nurture it, to protect it, and to guard it against injustice—that in this measure there are three different sections which place the National Guard in a position of subservience to the Regular Army, which place the guard as menials to the officers of what is known as the volunteer force, which place the guard as policemen in the States in which they exist, and rob them of all the sovereignty of character, the dignity of nature, and the splendor of life that belong to an American citizen in the defense of his country and who tenders all he has to that noble aspiration.

It is said that in the beginning of our Government there was this opposition to the militia. True; but, as I pointed out to the able Senator from Idaho, keeping in view his confession that his relation to the guard as an institution had not been, of course, as intimate, as we all know, as his relation to the law on the subject, the difference—I may say the confusion—arose from the fact of our inability oftentimes to distinguish between the militia as a power out of which the guard could be organized and the National Guard being a part of the Organized Militia.

Mr. President, the able Senator from Idaho brought into requisition his usual fund of learning as he took legitimate recourse to his splendid historical knowledge. The Senator from Idaho, speaking for the school of thought for which he stands, and which he eminently represents, said that the National Government should have a supervision, I may say sovereign in character, over all of its forces within and without a State, its discipline and the officering of the guard or the militia; otherwise, according to his argument and the argument of many others, there would be no competent force within the State whatever and they would be useless organizations for national defense.

It is true that Alexander Hamilton made such observations as the able Senator from Idaho quoted from, but I wish to call to the Senator's attention and to the attention of the Senate, who do me the honor to hear these dry observations at this time, that those views were combated even then; that even then it was not regarded as prudent that we should sever local force from a local control; and I think I can point out that Mr. Hamilton subsequently, after returning to the State of New York, where he lived, finding that the people of New York did not exactly concur with his view and that it was contrary to the best interests of the local sovereignty of the States and for the future theory of our dual Government, qualified his own observation; but of that we will let the Senate judge.

I call attention, first, to the fact that during the debates upon the Constitution this question to which my able friend alludes arose, and touching the question, I wish at this time to call attention, first, to the observations of Patrick Henry upon the question of whether the Federal Government should have absolute power or control over the Organized Militia, what we now would call the National Guard, or whether it should be left, as is the theory of our Government now, to a local sovereignty, except in time of national crisis or national peril.

Says Mr. Henry:

Your militia—

Referring to a then proposed proposition—

Your militia is given up to Congress—all power will be in their own possession. Of what service would militia be to you, when, most probably, you will not have a single musket in the State? For, as arms are to be provided by Congress, they may or may not furnish them.

You will gather from this that this argument is very much along the line of my suggestions that if the States have the right to officer this force in time of peace they still would be powerless unless the Congress chooses to protect them and fur-

nish them with proper sustenance and support. Continuing, Mr. Henry says:

Let me here call your attention to that part which gives the Congress the power to provide for organizing, arming, and disciplining the militia—

Referring, of course, to the Constitution—

and for governing such part of them as may be employed in the service of the United States; reserving to the States, respectively, the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress. By this, sir, you see that their control over our last and best defense is unlimited. If they refuse or neglect to discipline or arm our militia, they will be useless; the States can do neither, this power being exclusively given to Congress. The power of appointing officers over men not disciplined or armed is ridiculous; so that this pretended little remains of power left the States may, at the pleasure of Congress, be rendered nugatory.

Then Mr. Madison, having this proposition before him in the Virginia Convention, says:

But the honorable member sees great danger in the provision concerning the militia. Now, sir, this I conceive to be an additional security to our liberties without diminishing the power of the States to any considerable degree. It appears to me so highly expedient that I should imagine that it would have found advocates even in the warmest friends of the present system. The authority of training the militia and appointing the officers is reserved to the States. But Congress ought to have the power of establishing a uniform system of discipline throughout the States, and to provide for the execution of the laws, suppress insurrections, and repel invasions. These are the only cases wherein they can interfere with the militia; and the obvious necessity of their having power over them in these cases must flash conviction to any reflecting mind. Without uniformity of discipline military bodies would be incapable of action; without a general controlling power to call forth the strength of the Union for the purpose of repelling invasion the country might be overrun and conquered by foreign enemies. Without such a power to suppress insurrections our liberties might be destroyed by intestine factions and domestic tyranny be established.

Indicating clearly that they saw the necessity of these local forces being organized, disciplined, and officered, even in time of peace, in order that in their own States they might be able to repel invasion against that particular State where there might not be time or opportunity to call in the forces of the Federal Government or to invoke its authority. Therefore, I think it was, that Mr. Hamilton later—I assume when discussing similar subjects, not, I must say, withdrawing from his previous attitude as expressed in the quotation made by the Senator from Idaho, yet qualified them—indulged in observations such as the following.

Says Mr. Hamilton:

It requires no skill in the science of war to discern that uniformity in the organization and discipline of the militia would be attended with the most beneficial effects whenever they were called into service for the public defense. It would enable them to discharge the duties of the camp and the field with mutual intelligence and concert, an advantage of peculiar moment in the operations of an army; and it would fit them much sooner to acquire the degree of proficiency in military functions which would be essential to their usefulness. This desirable uniformity can only be accomplished by confiding the regular of the militia to the national authority. It is therefore with the most evident propriety that the plan of the convention proposes to empower the Union "to provide for organizing, arming, and disciplining the militia and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress."

The able Senator read a portion of this utterance, after which I beg now to add:

If standing armies are dangerous to liberty, an efficacious power over the militia, in the body to whose care the State is committed, ought as far as possible to take away the inducement and the pretext to such unfriendly institutions. If the Federal Government can command the aid of the militia in those emergencies which call for the military arm in support of the civil magistrate, it can better dispense with the employment of a different kind of force. If it can not avail itself of the former, it will be obliged to recur to the latter. To render an army unnecessary will be a more certain method of preventing its existence than a thousand prohibitions on paper.

Now, I ask the committee, with great respect—I, who am not a follower of the doctrines of Mr. Alexander Hamilton, certainly not in all respects—I ask them if they will not apply to section 56 of this bill this doctrine, as I now put it in the language of Mr. Hamilton?

If the Federal Government can command the aid of the militia in those emergencies which call for the military arm in support of the civil magistrate, it can better dispense with the employment of a different kind of force.

Why, then, this different kind of force, called the "volunteer army," if the Organized Militia can serve the purposes and uses which even Mr. Hamilton at that time saw, with the concurrence of the National Government, would be accomplished? If the full uses and, I may say, needs of our Government can thus be fulfilled, why should there be the introduction of this intermediate force, which in its very nature mascerates the guard out of existence as an independent and sovereign force within the State whenever the hour shall come when it shall be called



into service for the national defense? Therefore, quoting the last clause of Mr. Hamilton's utterance:

If it can not avail itself of the former, it will be obliged to recur to the latter.

But, as we have seen, it has always availed itself of the former, and may continue to avail itself of the former, why should there be this recurrence to the latter, to this extraordinary force introduced in this measure euphoniously designated the "volunteer force," and to which in a second I shall allude in more detail?

Mr. President, I am at a loss to understand what peculiar spirit there is in this Government at this particular time that has intruded itself upon this Republic to visit what I feel to be this affront upon the National Guard of the country. Why should it be at this particular time? May we not pause and ask something of the service of the guard? Who are these people? Has there ever been any evidence that the guard has shown hostility to the welfare of the country at large? I answer, none. Barring the single instance where they doubted the national authority touching the question of courts-martial, it is difficult for anyone to lay his hand upon an instance where the States—I am not now, of course, referring to the Civil War—ever offered the slightest opposition to any movement on the part of the National Government looking to the national defense or the national welfare.

We speak of the service of the guard. We should speak of it rather reverently. I know that here and there there have been instances to which gentlemen have alluded—and seemingly they do so with delight—wherein the guard has failed of that which might be expected; but those Senators, or those who have made such references, seem not to have paused to consider that much of that was caused by a lack of supplies. It was not due to a want of efficiency; it was due to a want of opportunity; they lacked the arms; they lacked munitions; they lacked training opportunity, and they could not accomplish, Mr. President, to the full extent the tasks the Regular Army accomplishes when they were so limited in means by comparison that they could not have that wherewith with which the Army had been equipped. Barring these illustrations which I offer, now, we turn and ask ourselves has there been at any time a reason why the guard should have been so discriminated against and at this particular time, so neglected?

Mr. President, we remember that the National Guard of the different States have been called upon from time to time to perform the most odious duties. They have been compelled to combat their own neighbors and friends, where there has been conflict between master and servant, between capital and labor. They have been called out to perform duty disagreeable in every aspect, wounding their every sensibilities; yet, notwithstanding that, in the pursuit of their duty they proceeded, taking the odium of the situation, the insult of those who surrounded them, bearing under disease, enduring the conflict of those who opposed them, firm in spirit and endowed with surpassing patience—in spite of all this, in spite of assaults upon them physically, they have proceeded in the performance of their duties to the State with honor and with dignity, and then they have returned to their homes to find in many instances that they were discriminated against, discharged by their employers, refused to be returned to their previous employment, left without a home, almost hopeless; and when they came here to Congress, seeking some recognition, they were flouted and turned from the door; but, nevertheless, they returned to their undertakings in behalf of their State in just the same spirit of devotion as before. Each generation has produced a buoyant lot of young men, men of splendid spirit, with noble ardor, with warm and generous natures, who, realizing the splendid discipline they would obtain, and enjoying the association of their fellows, have every year presented that splendid front of noble force for the defense of the State and for the glory of the Nation.

Mr. President, there is a disposition now and then to assume that the National Guard of our Republic is something new and, therefore, something to be only tolerated. I assume to ask the able chairman of the committee, whose industrious efforts spent on this bill I naturally applaud, but from whose conclusions in many respects I differ materially, to pause to recall that this force, the intermediate guard, has ever been the salvation of nearly every Government which has ever assumed to support the doctrine of freedom.

I see before me eminent scholars of history. It has been an opportune reference when, occasionally, scholars have referred to the Pretorian Guard of Rome. Let it be remembered that it was the local guard of the imperial governments of Rome, created within their respective functions, that saved Rome from being overrun time and time again through the centuries. Long before the Goths and Vandals descended upon that imperial

country with the blood of the virtuous Helvius Pertinax dripping from their fingers the members of the Pretorian Guard murdered their officers in fear that these might usurp the Government and overrun the land and produce that result which subsequently, years afterwards, was accomplished. On many occasions the army, being on distant outposts, could not be mustered and it was the guard led by Pretorius that saved Rome from foreign invasion. This was one of the lessons presented before our fathers who wrote the Constitution.

And Greece! Do I need refer to the historical fact that, when the Athenian League was dead and it seemed as if the liberty of that little country was imperiled by those who no longer desired it to remain free and were willing to surrender it to the legions of Philip, who then threatened it with despotism and destruction, it was the local force that amassed itself in a form which we speak of as the guard that rushing to the gates of the city stood with its sturdy strength, defended it against the invasion, and saved Greece that it might have life a little longer to present to us all the ideals of art, emblems of beauty, and models of classics; indeed, produced all the precedents and history of real democracy. It was from these that our fathers learned their earliest lessons, and profiting therefrom shaped the dual form of government by giving to the guard, the "militia," as it was then termed, its sovereignty within the States, and as Mr. Justice Story, in the last opinion in Twelfth Wheaton, directly varying from the opinion read by the eminent Senator from Idaho, clearly expressed his view of having this concurrent jurisdiction between the States and the National Government.

But surely, Senators, you will agree with me that it could never have been the idea that it could be a concurrent jurisdiction carrying with it the right of a National Government to invoke the State to the aid of the National Government in the hour of its peril, without calling for the corresponding duty of the National Government contributing to the State Government for the militia or guard, to the extent of its necessities, in order to bring it up to a disciplined organization essential to the welfare of the State against invasion that might be brought upon that State at any hour.

Yet, if the provisions of this bill shall remain as they now are, every incentive to the National Guard to continue the discipline which has been the glory of its past, and to maintain itself as a great force for defense against invasion will have ended, and the guard will have been placed in the humiliating position, after all these years of noble service of being subordinated to an intermediate force, not now in existence but to be called into power, to become commanded under the order of the President, while the officers of the guard become servants, and I may say servile, to those who will, while bearing the title of volunteer officer, will carry with them the power of the National Government. This makes the National Guard of every State of the Union really a third and ultimate force, only to be called upon when all others have been exhausted, and then used in such a manner that they remain subject to the orders of those officers who have been put in power under this bill, who may come from any part of the United States except the country, the State, or the locality whence the National Guard may have been organized. I hold that that is dangerous; I hold that that means the death of the guard. I am not willing that the home volunteer guard should receive this death stroke in the house of its guardians—I can not allow this measure, as much as I favor every form of organization of the Army, to be put upon the Senate with these provisions in it. They imperil the home forces of a country so heterogeneous as ours. Shall we mask the truth here, Senators? Are there any reasons to-day in this body why we should hide from ourselves the reasons why the National Guard should be kept in the States firmly and securely?

My friend from Iowa [Mr. CUMMINS], the able Senator who has been indulging in observations here; the Senator from Wyoming [Mr. WARREN], the eminent member of this committee; my friends, both the senior and the junior Senators from Minnesota [Mr. NELSON and Mr. CLAPP]—they live in a country of homogeneous population. They may never have reason to call for the guard in sudden emergency of things which they do not understand, not having experienced them. Let me turn to this side of the Chamber, and let us be frank at the expense of popularity. If ever the time comes that you dismember the National Guard in the States of the Pacific coast and forget the Chinese riots that they had to contend against, growing out, unfortunately, of labor disputes that Heaven hope may not be repeated, or of the Japanese uprisings, or uprisings of those who do injustice to the Japanese, we will say (accepting the views of others), or any of the nationalities upon which is precipitated difficulties which are wholly their own problems, where do you think these States, then, in such an hour, will get their defense? Shall they telegraph—as



under this bill it is necessary to do, as I think I can show you—to The Adjutant General of the United States, who may come from the State of Ohio or from the State of Illinois or from New England, and who, having possibly no appreciation of these local difficulties, must hesitate, must examine into the question, must pause, must consider before he can authorize this volunteer force to come to the defense of these localities, in the meantime of which every despoliation has been executed, every offense against the citizen, killing and murder, riot and incendiarism?

That, Senators, I am sure you will see, could not have been the intention of any of you, and yet it is the direct result of this bill in its construction, as I see it, and surely it will not be your purpose. Yet under these provisions the National Guard is left, notwithstanding the provision of the bill that seemingly masks—I do not say intentionally; I know the honor of the members of this committee—yet in its verbiage it masks the very evil to which I allude by saying there is reserved to the State the right to maintain these reserve forces, and then it immediately follows that by taking from the State every power by which it may execute, order, or enforce rights by these reserve forces, called "volunteer."

Now I come to my neighbors from the South. I was born in the South. To it I owe the gratitude of my rearing. I sympathize deeply with its problems, which never can be defined exactly to those outside of the South. You, Senators, well know what it has had to contend against from time to time; and while we will not charge the evil as against any race, we know it is sufficient to recall that the Southern States have been compelled to endure that which is nameless in respectable society. Yet under this bill, with no intention on the part of this committee, but unconscious of these situations, or for the moment indifferent to them, I do charge solemnly from my place, upon the responsibility of my position, that under four sections of this bill the State of South Carolina, the State of Mississippi, the State of Louisiana—States which in the past have been characterized with unfortunate inflammable exhibitions, or I may say the States have been inflamed because of the inflammable situation which from time to time has surrounded them—your guard, though reserved the right to serve in its local capacities, would be met with the following: The very moment there arose a crisis in these States by which this local force should be invoked for some reason it would be promptly pointed out that it had been usurped and supplanted under the provisions of the bill by the volunteer army; and it would also be pointed out, if they were attempting to interfere with what may be called rights claimed under the United States laws and the Constitution—to wit, in the case of the negro under the fourteenth amendment and in the case of the Japanese and Chinese under the treaty—that a State guard had no right or power and it was not within the right of the governor to call them out.

Of course we may haggle for weeks upon the legal construction, and we may find ourselves again, as the able Senator from Idaho and myself find ourselves now—he with one opinion of the court one way, I with an opinion from the same court another—both justified in the conclusions we draw; but in the meantime the unhappy situation of these States as I see it will become deeply deplorable beyond description.

Mr. CHAMBERLAIN. Mr. President—

The PRESIDING OFFICER (Mr. MARTINE of New Jersey in the chair). Does the Senator from Illinois yield to the Senator from Oregon?

Mr. LEWIS. Gladly.

Mr. CHAMBERLAIN. Do I understand now that the Senator from Illinois is complaining particularly of the provision in the bill for the creation of a volunteer force, or is he complaining of the attempt that is made to federalize the National Guard?

Mr. LEWIS. Mr. President, my complaint is twofold: First, that in federalizing the guard—which I feel should be concurrent—the effect of this bill is, as I see it, to repeal completely all the sovereign powers there are in the State with reference to the guard; second, that by virtue of the provision for the volunteer force in this bill the volunteer force will supersede the guard in all matters, except purely police duties within a State.

Mr. CHAMBERLAIN. In reference to the first proposition that the Senator lays down, permit me to say that every attempt at the federalization of the National Guard has been made at the earnest request of the National Guard itself, through its representatives, who have been given a patient hearing; and if the bill in that respect lacks anything at all, it lacks provisions that carry the National Guard as far into the federalization plan as the National Guard want to have it go.

Mr. LEE of Maryland. Mr. President—

Mr. LEWIS. Pardon me if I call my able friend's attention—I will yield to the Senator from Maryland in just a moment.

Mr. LEE of Maryland. I simply want to ask a question.

Mr. LEWIS. Certainly; I yield.

Mr. LEE of Maryland. I will ask the Senator from Oregon, the chairman of the committee, whether the provision in this bill is not that the control of the guard for services within the State is reserved to the governor and officers of the State?

Mr. CHAMBERLAIN. Practically so; but I wanted to call the Senator's attention particularly to that, because he is criticizing this bill on the ground that it contains provisions which have been insisted upon by every member of the National Guard who has been here. I call the Senator's attention particularly to an address delivered before the committee by Adj. Gen. Foster, of Florida, and by the distinguished major general commanding the National Guard of New York, where they insisted that we had the power and that it was the desire of the National Guard to be federalized just as strongly as it was possible.

Mr. VARDAMAN. Mr. President—

The PRESIDING OFFICER. Does the Senator from Illinois yield to the Senator from Mississippi?

Mr. LEWIS. I yield to the Senator from Mississippi.

Mr. VARDAMAN. I wanted to ask the chairman of the committee if there is any provision in this bill which would interfere with the governor of a State using the National Guard to meet any emergency within the State?

Mr. CHAMBERLAIN. I do not think so at all. That is where I differ from the Senator from Illinois.

Mr. VARDAMAN. Of course that would be quite unfortunate. Having been the governor of my State, I know the necessity for the use of the National Guard. I had the opportunity and occasion a number of times to use the National Guard; and anything that will interfere with the right of the governor to call out the National Guard to meet an emergency would be quite unfortunate.

Mr. LEWIS. Now, Mr. President, I say to my able friend the chairman of the committee that it is true that the officers of the National Guard have asked that the guard be federalized. I have been one of those officers who have sought this; but when these officers have come before the committee, I beg to say to the chairman that they have asked to have the guard federalized but recognized upon an equality with every other force. They desire that the guard shall be federalized and that there should be two forces, namely, the Army and the guard. But when the federalization comes forth in the bill, I insist that the guard has been subordinated to the intermediate force of the Volunteer Army, which, I say to the able chairman, was never submitted to them, nor have they ever accepted it; and they never could have accepted it without realizing that their uses were at an end.

Now I come to the second question. The Senator from Maryland [Mr. LEE] asked the able chairman of the committee if there was not a power reserved in the bill leaving the militia under the control of the governor, to which the able chairman says, "Practically so." And when the Senator from Mississippi [Mr. VARDAMAN]—who, like the chairman of the Military Affairs Committee, was a distinguished governor of his State, and both recognized the needs of local sovereignty—asked the chairman of the committee if this bill allows the governor to call out the militia in case of any exigency, the able chairman says he "thinks so." It is that which gives me my concern; and I pointed out some time ago that the provisions of this bill are such that even the chairman himself, with his splendid ability upon the honor of his position, can not say absolutely that it is true.

Mr. CHAMBERLAIN. Then, Mr. President—if I may interrupt again—if the Senator is going to be afraid to act because of a doubt, he will have to eliminate the whole of the National Guard provision from the bill.

Mr. LEWIS. I will say to my able friend that I purpose offering some amendments that I feel will make exact these powers. I am only calling attention now to what I charge, and what I will continue to charge—that this committee, valorous and patriotic, in the pressure of affairs did not realize what it was doing in this bill; and I shall give a reason in a moment.

The able chairman recognizes that I am here, not criticizing the bill as an opponent, nor condemning the measure as one which I would have defeated, but as one alive to the best interests of the guard, pointing out to him as I see the matter, and pointing out to the committee, what I regard as provisions in this bill which later I shall allude to as placing the guard at a great disadvantage, and subordinating it to this third force,



this intermediate force which renders the guard impracticable for use and practically puts an end to its service.

Mr. CHAMBERLAIN. Mr. President, may I interrupt the Senator once more?

Mr. LEWIS. Oh, certainly.

Mr. CHAMBERLAIN. I am not going to interrupt the Senator again; I shall address myself to this matter in my own time after a while; but I want to call the Senator's attention, in connection with the National Guard which he is discussing, to the fact that the Constitution itself fixes the power of the governor over the National Guard of the State, and this legislation could not possibly take away or change that power. The differences of opinion here in the Senate are not over that proposition. All concede that the governor has absolute power under the prescribed terms and limitations of the Constitution. The differences amongst Senators here are as to the power of the Federal Government over the National Guard in view of the limitations in the Constitution.

There is not any question about the governor's power. That is fixed and determined, and I think is conceded by everybody. There is no purpose in this bill to take it away from the governor, and the Congress could not take it away if they tried.

Mr. LEWIS. The suggestion of the Senator from Nebraska [Mr. HITCHCOCK], a member of the committee, to the chairman of the committee that he call my attention to the fact that the Constitution authorizes the governor to call out the militia refers to something which we all recognize. I have pointed to that before. It is this—and now I ask the chairman to note the distinction:

The Constitution vests in the governor, whoever he may be, under the dual theory of our Government to which I have alluded, the right to call out the militia. It vests him with that privilege. I respectfully urge that the militias are left by this bill in such a condition that they would have no existence by virtue of which a governor could utilize them; for in this bill, as I see it, they are left so mangled as a guard that this intermediate force, called the volunteer army, so supersedes them that first they have no potency, no virility; second, that notwithstanding the Constitution vests in the governor the power to call them out, the provisions of this bill so vest privileges that heretofore have been exercised in another way that you create a conflict between the Federal Government and the State authorities as to whether the particular occasion that calls them out justifies the governor in calling the State force or the President to order out the National Volunteer Army.

Shall I remind my friend, the able chairman of this committee, that in his own State a governor named Penoyer from one point of view directly opposed the President of the United States, Mr. Cleveland, a Democrat, on this very issue, standing on the State constitution, while those advising Mr. Cleveland stood on the Federal statute? Shall I remind him that in the State of Illinois, which I now in part represent, we had the exact situation between Gov. Altgeld, of Illinois, and the President in the Pullman-car strikes?

What I wish to call to the attention of my able friend, the eminent chairman of the committee, is that these provisions have so beclouded the heretofore sovereign power within the States over the Guard that they are now left to be a subordinate to an intermediate force, and that hereafter there will arise legal contenders who will say that the word "militia" in the Constitution, and the power over the militia in so far as it is vested in the President or in the Federal Government or in the State, has now been expressed by the Federal Government in that force called the volunteer force, leaving the thing we now call the National Guard as having no constituted authority from any recognized national source. That it has been superseded.

Therefore, in the language of Alexander Hamilton, which I read, that intermediate force is unnecessary. As long as the Guard in its original condition, in its power and virility, if properly used concurrently with the National Government, can serve the uses, I insist, first, that the volunteer force provided in this measure is not needful; second, that its existence will destroy the uses of the governor; third, that in making any attempt to organize it we will disorganize whatever Guard there is.

I have pointed out, Mr. President—

Mr. CHAMBERLAIN. May I interrupt the Senator once more?

The PRESIDING OFFICER. Does the Senator from Illinois further yield to the Senator from Oregon?

Mr. LEWIS. Surely.

Mr. CHAMBERLAIN. The Senator has referred to an occasion when a former governor of Oregon came in conflict with the President of the United States.

Mr. LEWIS. Yes.

Mr. CHAMBERLAIN. I remember that very well, because when the President of the United States suggested some course which should be pursued in Oregon, and wired the governor to that effect, the governor of Oregon telegraphed back to Mr. Cleveland: "You attend to your business and I will attend to mine," and the fact is that nothing was done.

But, Mr. President, I feel that if the position which the Senator takes is the correct one, and the Federal authorities can not be given some control over the National Guard, I, for one, will be in favor of withdrawing any support that the Federal Government gives the National Guard now. I differ from the Senator somewhat, and I shall discuss the matter a little later. I believe that Congress, by the exercise of its unused power, as stated by the Senator from Iowa, can go very much further toward federalizing the National Guard than the Senator from Idaho does. We have attempted to exercise all the power we thought Congress had under the Constitution. If we have not the power, or if we have gone further than we had a right to go, then I think it is useless for the Government to waste any more money on the National Guard. It was the very purpose of the committee, and it is partially the purpose of this bill, not to take away the power of the governor of the State—that can not be done—but to bring the National Guards so closely in touch with the Federal department that the Government itself shall have control over them.

Mr. BORAH. Mr. President—

The PRESIDING OFFICER. Does the Senator from Illinois yield to the Senator from Idaho?

Mr. LEWIS. I do.

Mr. BORAH. As I understand, there is no contention over the proposition that it is not within the power of Congress to take from the governor of the State the power to call out the militia for the purpose of enforcing the laws of the State or protecting the peace of the State, is there?

Mr. CHAMBERLAIN. Not at all.

Mr. BORAH. The Senator from Illinois is of the opinion that the committee have undertaken to do so.

Mr. LEWIS. Will the Senator finish whatever interrogatories he has? Then, I will answer them all.

Mr. BORAH. The point I wanted to have discussed, in view of this suggestion, was whether or not there is an attempt upon the part of the committee to take away the power of the State to use the militia for the purpose of enforcing the laws of the State, suppressing insurrection, and so on.

Mr. LEWIS. Mr. President, I first return to the chairman of the committee.

The observations of the chairman of the committee would intimate that I am opposing the federalization of the National Guard. I have pointed out to the chairman that I have not only sought its federalization here, but—if I may be pardoned for the vanity of indulging in something of my own experience in this behalf—I did so in the spring of 1899, while a member of the committee in the House of Representatives. I sought there, I have sought since, to bring about its federalization; and I have to-day read authorities—I regret that the senior Senator from Iowa was not here when I did so—supplementing some of the views of the Senator from Iowa. I pointed out that what we should have is a concurrent federalization, by which the National Guard and the Army should be the two forces of defense; that the intermediate force proposed here would destroy the Guard, and destroy the concurrent support between the local sovereignty of the State and the national unity, and that such destroys the uses of the Guard and renders it ineffective in the State, because there is no longer an incentive to maintain it either in an incipient state or in a state of organization.

Now I turn to the question of the Senator from Idaho. There is no provision in this bill that assumes directly to take from any governor the authority vested in him by the Constitution. What I wish to point out is that the definitions in the bill of authority to the Guard and to the Volunteer Army provided for under this act are of a nature which, failing to recognize the right heretofore existing within the State, will be hereafter construed to be an attempt to take it away, and that unless you can stand literally upon the constitutional clause there will be a dispute between those who will insist that the Volunteer Army has been given a privilege which supersedes the Guard, and those of my school who insist that the Guard still stands in every sovereign right that the Constitution provided for the States. It is that difficulty that I am pointing out and urging that it will surely arise. The Senator from Idaho was not here a moment ago. I will point out to him what I had in my mind, and I expressed it.



In ordinary strikes, as we call them, disputes between labor and capital, arising in the Middle West, let us say, there probably would be no serious dispute; but take the State of the Senator from Idaho, or the States on the Pacific coast, where there do arise conflicts touching those of oriental nations who claim their protection under the treaties of the United States and under the laws of the United States, but particularly by virtue of our international relations; or in a certain section of our Southern States, who claim that privilege under a direct United States constitutional provision. Does the eminent Senator from Idaho fancy there will not be those, in the event of any difficulty arising, who will insist that as far as these are concerned it is their right to be protected by the National Volunteer Army; that it is not in the right of the governor now to call out the militia touching any conflict created by their position; that they have a right to be protected under Federal power; and there will be the insistence that the Volunteer force is the only one that could be called out, and that only by the President, under this bill?

Mr. BORAH. Mr. President—

The PRESIDING OFFICER. Does the Senator from Illinois yield to the Senator from Idaho?

Mr. LEWIS. Certainly.

Mr. BORAH. I have been impressed with the view which the Senator is now expressing. I have not taken issue upon that proposition. I simply want to hear the Senator's view of it. But one thing seems to me rather extraordinary in that connection, and it is that the oath which the member of the National Guard is required to take relates alone to his obedience to the laws of the National Government and obviates entirely the question of his taking an oath to support the laws of the States. I think that is quite in harmony with the suggestion the Senator has made, but I think it is perfectly futile. It will have a tendency to mislead, as the Senator says; but as a legal proposition it can not accomplish what they seemingly seek to accomplish.

Mr. LEWIS. Mr. President, we must all concede, as the Senator from Iowa [Mr. CUMMINS] this morning intimated, that there are these legal doubts concerning these provisions. No man can really say that this or that is a fixed rule of law concerning how far the Federal Government may go toward the State and how far the State may go toward the Federal Government. We have for the first time begun to federalize the guard and put it in a position of concurrence with the Federal Government. That is to say, for the first time we have gone to a greater extent than we ever have heretofore; and it is very natural that the members of the committee should have been more or less confused in their views, able lawyers though they are. It is equally very natural that we should find ourselves at variance. We are really upon a new question, and all that Senators can do is to express, each for himself, the viewpoint as he sees it, trusting to this body, which is assembled here to do the very best it can, and hoping that it will be able, from these viewpoints, to reconcile the situation to the best conclusion possible. Thus it is that I am pointing out what I feel to be the perils of the omissions and expressions and policies set forth in this bill.

Now, let me take one particular illustration to which I happened to hear the Senator from Iowa [Mr. CUMMINS] this morning allude. Here is the guard. It is made subject to the service of the Federal Government if after you utilize the Army and the second force, known as the Volunteer force, it shall ever be reached; and if it has enough of existence then, in its being reached, to be of service to anybody—and yet this provision for advisory staff eliminates the possibility of these men, whose lives must be at stake, whose destinies are thrown in the balance, having anybody here at the Capital concerned in their welfare or speaking in their behalf or prescribing anything concerning their obligations within the State or for the national welfare. They may die for the Nation but have no representation. That is another illustration of the peculiar ignoring of the Guard which I feel has not been the intention of the committee, but which, nevertheless, expresses itself in a spirit that ought not to be longer allowed.

Now, I must move to a conclusion.

Mr. CUMMINS. Mr. President—

The PRESIDING OFFICER. Does the Senator from Illinois yield to the Senator from Iowa?

Mr. LEWIS. Certainly.

Mr. CUMMINS. Just a moment ago the Senator from Illinois made a suggestion that attracted my attention. I have not been able to hear his entire argument. I should like to ask him his view upon this subject:

Referring to section 56, which provides for calling out or organizing and training a certain number of men called volunteers, in doing so do we exercise the power given in Article I,

section 8, of the Constitution to raise and support armies or do we exercise our authority in organizing or calling out the militia?

It has been said to-day, and with a great deal of force, that the Regular Army, so speaking, is made up of men who are professionally soldiers; that is, they enter the service for a definite time, and for that time they have no other occupation. Now, we undoubtedly have the power to raise armies. Will these volunteers, when they are organized as provided in section 56, be a part of the Regular Army or will they be one form of militia organized to prepare and train for the event of war?

Mr. LEWIS. Mr. President, the Senator has submitted a question filled with very annoying situations; and, so far as I am concerned, it is one to which I must reply that, as to the matters he is doubtful about I do not know. This much I will say to the Senator: When I have comprehended and contemplated that situation I am compelled now to say, and I will warn the able Senator from Iowa—who has been the executive of a State having a splendid Guard—that if this measure passes both Houses, then whenever this volunteer army wishes to undertake anything that can be justified as a militia it will be found claiming its authority under the term "militia" as found in the Constitution. When it runs counter to the Guard, whenever it wishes to do a thing which it feels is within the Army powers, it will contend that it is done under the Army powers as distinguished from the militia powers; and there will be that conflict until the question finally gets to the higher courts for construction. It is that very form of conflict, I will say to the eminent Senator, to which I have alluded in discussing the subject with the Senator from Idaho and other Senators taking an interest in this discussion, that compels me to invite the attention of the committee to the danger it is producing.

Now, I ask you, Senators, what do you think was the reason of introducing the provision creating this Volunteer Army as against the Guard, which I hope to see federalized with the National Government, leaving two forces, the Army and the Guard, and then the power to bring in the citizens from the hillsides and the valleys and their doorways and their homes, properly trained, as an additional force? What do you think has been the necessity of the intermediate force to which I am now referring?

I shall not permit myself to be personal, but I invite your attention to some history. I impugn the motives of no man in this place. I pray I may be divorced here from a prejudice that compels me, at times, to express condemnation in other quarters.

Mr. President and gentlemen of the Senate, do you fancy that this particular provision is new? I do not pose here as having more information than any of you; but, gentlemen of the Military Affairs Committee, I am sure your attention must have been drawn to the fact that this provision, with slight changes, found its authorship in 1866. It was duplicated in 1878. It was condemned by Gen. Grant, who was a volunteer soldier in all his sympathies and his soldierly qualities; and finally it made its appearance again in 1898, following the Spanish-American War, under the name of the Hull bill; and there has not been a time following any war in this Republic since the Indian wars when there have not been certain gentlemen who have taken the landwehr of Germany, the militia, the intermediate force that Napoleon created for the protection of the interior of France, and reproduced it in some form, and handed it in here as something new and novel; and even in the case of so able a lawyer as the former Secretary of War there were certain insistent, delusive, and attractive forces in this Government that were able to influence that eminent official into the belief that he had brought forth a new thought.

And why? I speak what I feel, and I ask no man to join me. First, it must occur to you Senators there is no need of that force if the Guard be patriotic. There is no need of that if the citizens are patriotic, for the citizen who is patriotic would go into the Volunteer Army, would go into the Guard already in existence, already caparisoned, already equipped. Then why do you seek through an intermediate course a force wholly original, to be newly trained, newly drilled, newly caparisoned for duty, for which we have already the units needed, only to be added to?

I answer, as the learned Senator from Idaho stated, the Constitution of the United States does not say "officered by the States," referring to the National Guard. If it had, this provision for a volunteer army never would have been here.

Mr. President, we have a great many men in the Army, patriotic men, who have come out of West Point and other national service and have reached some deserts, but not all they were entitled to. They have waited for years to have some recognition, and it is a legitimate aspiration. These conditions, however, our Government has not afforded the opportunity for; these officers could not be appointed officers of the Guard, a lieutenant of the United States service could not be made a captain,



a captain could not be made a major, a major could not be made a colonel because of that provision which the Senator from Idaho says stands as an obstruction to the nationalization, and the chairman, the Senator from Oregon, points out, because under that the State officers the Guard. If the President could have officered them there would never have been that provision for the Volunteer Army introduced in the Senate nor would it have imposed on our former Secretary of War, who is a good lawyer—these officers who have brought forth this invention would have had their just ambition gratified in being officers of the State forces.

Mr. WARREN. Mr. President—

The PRESIDING OFFICER. Does the Senator from Illinois yield to the Senator from Wyoming?

Mr. LEWIS. Certainly.

Mr. WARREN. I think the Senator with his vivid imagination is "seeing things" that have not materialized, as far as information that he intimates has surrounded the Committee on Military Affairs is concerned.

Mr. LEWIS. I have not intimated or said such a thing.

Mr. WARREN. So far as I know not a member of that committee had any intention by any act or any suggestion to make the National Guard less but to make it more. But I will ask the Senator, with the conditions as they are, suppose we become involved in war with Mexico, which is not entirely out of the question.

Mr. LEWIS. It is to be hoped it is out of the question.

Mr. WARREN. If we were compelled to go down into that country and meet an army much larger than our own what would the Senator do then for recruiting forces? He would send for the Regular Army.

Mr. LEWIS. The recruiting forces, the Regular Army?

Mr. WARREN. Yes; he would send for the National Guard.

Mr. LEWIS. The Senator is asking me what I would do. I promptly say that in any such condition of war I would carry out the provision that called at once for a force, as we have done many times before.

Mr. WARREN. What force?

Mr. LEWIS. I would call promptly for the volunteer forces. They would be in such time of war, the Senator will recognize, under the control of the President of the United States. It is no longer a National Guard.

Mr. WARREN. But what forces would the Senator call?

Mr. LEWIS. Any force that is within the limits capable of filling the required allotment of men necessary at the time.

Mr. WARREN. We could not do it with the National Guard unless they should enlist as volunteers in the Regular Army.

Mr. LEWIS. Surely the Senator does not intimate that the National Guard would not volunteer its services.

Mr. WARREN. I do not.

Mr. LEWIS. Its services have been volunteered in the past and they would do it again.

Mr. WARREN. The Senator has, I think, been misinformed or he would not indulge in what seems to be jealousy, because it is proposed to have some prepared force additional to the Regular Army and additional to the National Guard, which costs but little for maintenance for a few days or a month in each year, to fill such an emergency as I have indicated, where the Regular Army is too small and where the National Guard can not be called upon as a National Guard to aid the national forces. I say that that is no insult to the National Guard, as stated by the Senator, and never intended as such. Those that may claim this to the Senator either do not know what they are talking about or what others are thinking about when it is intimated that there is an intent to insult the Guard, that this has been put upon the bill in the interest of West Point officers, when, as a matter of fact, of the officers of the Army only 44 per cent of them were West Pointers to begin with. The Senator is impugning not only West Pointers but he is impugning nearly two-thirds of the force who never saw West Point as students.

Mr. LEWIS. I trust the Senator has satisfied himself that he has made his speech that may be quoted in his Army circles to prove him the great advocate of the Army and myself the critic. I certainly have nothing against the Army, nor can I ever make any reflection on the Army. The Senator knows his observations were gratuitous and unnecessary. The Senator has seen fit to put into my mouth expressions which I never used. He flatters himself that he has said something that he will stand hereafter as the great sponsor of West Point. I assure the Senator I have made no allusion to West Point soldiers except to call attention to the fact that they had not obtained their deserts. I have pointed out a way for them all to get promotion and raise

of pay. This provision I condemn denies them both, yet flatters them with the prospect of superseding National Guard officials—

Mr. WARREN. Mr. President, it would be better, I think, for the Senator to answer the question. Of course, I do not mind the little ridicule in which he indulges. I accept it good-naturedly. But he has not told us yet what he would do in obtaining the additional force to take into Mexico.

Mr. LEWIS. If the Senator may be patient he will get a reply to all his inquiries. He may rest assured, since he has volunteered to make his speech in defense of some one who has not been assailed, his only purpose must have been to draw some benefit to himself at the expense of unjust criticism of me, for there was nothing from me calling forth such.

Now, the Senator says he assumes that I have exercised my vivid imagination.

Mr. WARREN. Did not the Senator say that these officers—I will not use the exact words, of course, of the Senator—have brought this about with their influence upon the committee to make promotions for themselves?

Mr. LEWIS. One can call the nature of a thing according to his own construction. I will repeat what I said, and as I repeat it and call your attention to it I think I will be able to verify it. First, I will say to the Senator the allusion that I have made to men from West Point was to call attention that large numbers of them come forth and have not received their deserts because of conditions that did not offer opportunities; that they could not be made officers of the State guard, because under this very provision those officers must be appointed wholly by the governor. I pointed out a way to use their valuable services to the State. Having made that observation once, I repeat it.

I also pointed out that if there had been places for these officers there never would have been a suggestion of intermediate force, because there would have been no incentive to create it.

The Senator from Wyoming, heretofore the chairman of this committee under a different administration, asks what I would do. I ask him, What did Lincoln do? What did the Presidents of the United States do when there was no such volunteer measure? What has ever been done? I would do exactly as has been the course of the Government for a hundred years. I would, if I were President, proceed to call out the forces, on the theory that we were at war, and so would come these volunteers, choosing their own officers or officered by the National Army, and the Army officers, whenever we could get their splendid skill, and we would get them in the exact measure we have heretofore. I would also indulge the assumption which my friend from Wyoming seems not to find agreeable, that the National Guard would be patriotic and diligent and would likewise serve their country.

I answer the Senator with another observation—

Mr. WARREN. Will the Senator allow me right there?

Mr. LEWIS. Certainly.

Mr. WARREN. I do not propose to be put in the position of taking any ground against the National Guard. I have belonged to the National Guard both as a private and as an officer, and I have in an humble way been in the Volunteer Army.

The Senator says he would raise an army as Lincoln did. If Mr. Lincoln had had a trained force of volunteers; it would have saved hundreds of thousands of lives, as we would do if we should go into war now if we had this despised force the Senator looks at, a volunteer force that may be trained and ready to go without sacrifice; but we have suffered heretofore from having called into war men entirely green and unprepared.

Mr. LEWIS. I do not know upon what assumption the able Senator from Wyoming assumes that I despise anything. I never used such an expression. I do not despise anything. I have been suffering much that was despicable at the hands of the Senator's party and the eminent Senator; but I never despised it or any member of it—I criticize, not despise.

But I pointed out to my able friend my viewpoint and I respect the viewpoint of every other Senator. I then answer the Senator as he has made an allusion which I have seen in print many times. I would like to call attention to the mistaken assumption and to say that if there had been this volunteer force to which my friend alludes and it had prevailed in all States of the Union, equipped, accoutered, provided for, previous to 1860, far from the advantage being to Mr. Lincoln there would have been a force of southerners who would have been so aided as to have made more difficult the then situation.

Mr. WARREN. I presume the Senator does not anticipate another civil war.

Mr. LEWIS. No; but my friend asked me as to what could have been done.

Mr. WARREN. The Senator does not expect such a comparison would be the same as that between the Republic of Mexico and the United States to-day.

Mr. LEWIS. No; I would not. Answering the Senator's question he asked me what I thought would have happened with Mr. Lincoln in his time if he had had trained forces. I answered that, while it had some benefit it also had a corresponding evil, so far as the Government of the Union is concerned, which has not been calculated by those who have made that very statement.

Mr. President, I ask the attention of the Senator from Wyoming to a statement of experience in military matters to verify the assertion I have made. I again assert if there had been places for many of these officers of the Army, whose splendid qualifications fit them for recognition by which they could have been appointed, or our Army had grown so large that there could have been places for them, there would not have been the suggestion of this intermediate volunteer force, because there was no need of it. It is plain that it would reopen many volunteer forces from the States who would be accessible to the Federal Government for any use in the world. I call the Senator's attention to the Hull bill.

Mr. WARREN. Will the Senator allow me?

Mr. LEWIS. Surely.

Mr. WARREN. I do not know of any commissioned officer in my acquaintance who has advocated the measure that we are now discussing unless it was referred to him and his advice asked. The inference the Senator tries to draw is that the ambition of officers who desire higher places has been the cause behind it all of our adopting this idea of a Volunteer Army. If that be true, I have never seen a shadow of it. That is all I can say, of course.

Mr. LEWIS. I will say to the Senator I can say nothing of these forces wherever they are seeking to obtain recognition of their merits except to approve such. They sincerely believe there should be an increase of the Army. Knowing in their hearts that there is a feeling in this country against a large increase in the Army, and knowing that they can not be officers of State guards, they sincerely believe that the creation of this intermediate course is justified by conditions of the time. But this creation of a force likewise gives opportunity to the scholars of military tactics which before did not exist.

I invite the able Senator's attention to the Hull bill. He was here in 1898. The provisions of the Hull bill contained a section—section 17, if I am not in error—that in the new organization of the Guards as certain members of the volunteer forces the President should appoint the officers. There was no provision to elect them between themselves, or choose them, nor in the States where these organizations were created was the power left in the governor. It was because of that opportunity—it was because of the particular privilege in that new bill—that there arose great opposition to it.

Now, the learned Senator will recall—and I must admit my turpitude, my culpability—that I was charged in those days with speaking of the West Point men as "satraps and sapheads," and that was sent out all over the United States and the State I then represented. This was to hold me up as being ridiculous and contemptible. Everyone knew I could never have said such a thing. It is well known that I, together with George B. McClellan, Member from New York, the son of Gen. McClellan, a veteran soldier; Col. Marsh, a Member from Illinois; and Gen. Grosvenor, Member from Ohio—these were the only Members who carried on the fight with me. We struggled as best we could to prevent that measure, but were unable; and when the fight was made on me, on the ground that I was opposing the organization of the Army, and I was being hissed from a waiting band of hopeful aspirants for commissions, I looked into the galleries where certain officers were caparisoned in gold lace and the soft sons of luxury breathing forth an air suggestive of golf links and tennis rackets, and who had come there in the hope of things they felt were going to transpire, I did say then, in response to this accusation, that I am in favor of an organization of the Army as it is being made; but then, on being hissed, I referred to the conditions I am now alluding to. I said, "I am in favor of an Army of soldiers." I see now my friend the Senator from Kansas [Mr. CURTIS], who was present, over there, and he will recall the expression. I said, "I shall demand the organization of the Army by soldiers; but I shall now, as I have heretofore, oppose the organization of the Army by tessellated military satraps on the one hand or gilded society sapheads on the other." I still stand there. I hope such a condition never existed, but in my mind at that time I so expressed the peculiar conditions. I call the attention of the able Senator from Minnesota [Mr. NELSON] to what happened. He called attention yesterday to

this form of organization and referred to the Guard. He painted it as a general merger and said it was officered by Army officers; and I say to the able Senator from Minnesota there were some officered by officers of the Army, but in most instances political favorites were given command, without regard to any experience or no experience in military matters of any kind. I call to his attention that in a few instances they were splendidly officered; but the trouble that arose, which gave us all our difficulty, was the thing to which I now invite the attention of the Senator from Wyoming.

I call the attention of the Senator from Iowa to section 56:

The President is hereby authorized, at any time, to organize, maintain, and train—

And so forth. You know the remainder of the act.

I read a part—

The term of enlistment, which shall in no event be greater than that of the Regular Army, the period of service with the colors and with the reserve, and the period of training shall be as the President may prescribe, those passing to the reserve to have the status and obligations prescribed for reserves of the Regular Army. Officers and enlisted men of the volunteer forces raised under the provisions of this section shall be entitled to the pay and allowances of officers and enlisted men of corresponding grades in the Regular Army during periods of training only.

Temporary appointments and promotions of officers of the Regular Army arising from the operation of this section may be terminated at the discretion of the President.

Officers of the Regular Army who receive commissions in the Volunteer Army herein authorized shall in time of peace receive the pay and allowances of their respective grades in the Regular Army.

Making the volunteer officers exact officers as it is now of the established Army. Then I will ask the able Senator from Wyoming to note that there is a provision by which the temporary appointment of this organization violates all the temporary-appointment laws I have ever known existing in our States. Heretofore, when a company organized in the way named, its officers were selected by the company temporarily. In the Army we know the system, but in this bill the—

Temporary appointments and promotions of officers of the Regular Army arising from the operation of this section may be terminated at the discretion of the President.

Officers of the Regular Army who receive commissions in the Volunteer Army herein authorized shall in time of peace receive the pay and allowances of their respective grades in the Regular Army, and no more.

I invite the attention of the able Senator from Wyoming that the provision there is almost identical. It enables the President of the United States to transfer any of the officers of the Army to the command of the Volunteer Army. I do not say it is a bad thing; I think it is probably an exceedingly good thing, if we are to have such an army; but I do respectfully call his attention that we now have a duplication of what Col. Marsh called attention to when he showed in 1898 that this measure was born in 1866. Now this, of 1916, was brought from 1898 all for the object that the Volunteer Army is to be officered by these members of our Regular Army, capable and efficient; and you will observe they are all but whose deserts ought be provided for by a proper increase of the Regular Army.

Mr. WARREN. Mr. President—

The PRESIDING OFFICER. Does the Senator from Illinois yield further to the Senator from Wyoming?

Mr. LEWIS. Gladly. I am glad to have the views of my able friend.

Mr. WARREN. I have been following very closely what the Senator has to say, and he called my special attention to section 17. The Senator will remember that the officers of the volunteer forces always in the Civil War, and always at other times, so far as I know, were appointed by the President.

Mr. LEWIS. I quite concur with what the Senator has already said as to the army of the Civil War.

Mr. WARREN. It is true in some States the companies elected their officers and sent them, if they were in the militia, to the governor, or maybe sent them to the President; but, as a matter of fact, the President makes the appointments in the Volunteers, and always has done so.

Mr. CUMMINS. Mr. President—

Mr. LEWIS. I beg pardon. May I answer the Senator from Wyoming? In time of peace the President is to appoint the officers of the Volunteers.

Mr. WARREN. I mean in time of war.

Mr. LEWIS. Yes; I concur; and I have been contending that that is to be done in time of peace, and that I am opposing.

Mr. WARREN. We are preparing in the volunteer service for time of war, or we would not have a force.

Mr. LEWIS. I point out to the Senator from Wyoming that under the provisions, lest I misconstrue them, these officers, temporary and otherwise, in time of peace, when there is no war, are to be appointed from the Army. I am sure the Senator will not disagree with me there.



Mr. WARREN. They are assigned always, so far as I know, like officers for service with the Volunteers. They do that in war time, and this measure proposes to do it in peace.

Mr. LEWIS. The Senator and myself wholly agree as to that, and there is where I feel arises the great difficulty. I yield to the Senator from Iowa.

Mr. CUMMINS. I call the attention of the Senator from Illinois to the amendment to section 56 that has been reported by the committee, and I assume adopted. I am not sure about that, however. However, the amendment proposes a change in the section limiting the period of service to 30 days in each year. Obviously these volunteers do not become professional soldiers under the definition that we have heard more than once to-day with regard to the difference between Regular Army men and militiamen. With that statement, I ask the Senator from Illinois if I may kindly address a question to the Senator from Wyoming in his time?

Mr. LEWIS. I am delighted to serve the Senator.

Mr. CUMMINS. It is purely for information, for I have the greatest desire to organize the most efficient strength that we can organize within proper limits for the national defense.

The Senator from Wyoming, of course, understands that Congress has just two powers relating to this subject. First, it has the power to raise and support armies; second, it has the power to provide for calling out the militia and for organizing, equipping, and disciplining it. Will these volunteers who are to be raised under section 56 be parts of the Regular Army? Do we organize the volunteers under our power to raise and support an Army, and if we do, may we raise an Army merely for the purpose of training its members 30 days in the course of a year? What is the difference between such a volunteer force and the militia? There is no such thing, as we have been told this morning, as a national militia, and I want to be clear on the one point as to whether these volunteers are to be reckoned, from the time they are enlisted, as professional soldiers, members of the Regular Army.

Mr. WARREN. I will say to the Senator from Iowa that they are very much in the condition of the reserves of the Regular Army. They are all volunteers, but in the reserves, being trained as the others have been, to be called upon in case of war as reserves are called upon. They are not a part of the militia, in my view of it, and they become instead, as I have stated, a part of the Regular Army.

Mr. CHAMBERLAIN. They are enlisted.

Mr. WARREN. They are enlisted regularly. They are enlisted as a reserve force and are to be trained within certain limits, and are to be at the call of the country in case of its peril.

Mr. CHAMBERLAIN. Will the Senator from Illinois pardon me a moment?

Mr. LEWIS. I yield to the chairman of the committee.

Mr. CHAMBERLAIN. In answer to the question of the Senator from Iowa I will state that there is not any question but that they become a part of the enlisted force of the Army in time of peace, only to be called on for the purposes of training, but until the enlistment period expires they can be called on at any time.

Mr. WARREN. They are the Regular Army in reserve.

Mr. CHAMBERLAIN. Yes, sir.

Mr. CUMMINS. Mr. President, just a moment—

Mr. LEWIS. I yield.

Mr. CUMMINS. As I understand it, they have all the characteristics of the militiamen, as described by the Senator from Idaho, namely, they are not in the Army as a profession. They enter the Army retaining their individual avocations as much as do merchants, or carpenters, or masons, or lawyers, but they are not in the service until the event that war transpires, and they are called into it then to defend the country. I should like to know what the difference is between such a man and a militiaman.

Mr. CHAMBERLAIN. The great difference is, if the Senator from Illinois will pardon me a moment—

Mr. LEWIS. I yield. I would like to have these differences composed without considering me.

Mr. CHAMBERLAIN. The men who enlist in the Volunteer Army sign the regular enlistment blank that is signed by a Regular soldier, but it limits their use in time of peace to 30 days' training. As to the National Guard, we have proposed that in addition to the oath they take as guardsmen they shall have a dual oath added to it. They not only swear that they will answer the call of the governor of the State, but also to answer the call of the President of the United States.

Mr. CUMMINS. I am not asking now what provision we may make about the National Guardsmen, but I am trying to ascertain the status of these volunteer militiamen who

are entering the service just as a National Guardsman enters it—for the purpose of training and without the obligation to come to the colors until war or the imminence of war appears. I say, if we are to accept these views with regard to the difference between troops and militiamen and soldiers and militiamen, Congress has no power to bring such men into the service.

Mr. CHAMBERLAIN. Let me call the attention of the Senator to the decision of the Supreme Court in One hundred and thirty-seventh United States. The court held there—Mr. Justice Brewer, I think, delivering the opinion of the court—that signing the contract of enlistment changes the status of the individual. If his oath is to the State in one instance, the contract is directly with the State. To that extent the Senator from Idaho is absolutely correct in this contention.

But as to the National Guard it is proposed to go further than that, and an amendment I think will be offered recognizing the difference between the oath the man takes to serve the State and the one which he takes to serve the Federal Government. It proposes to put him in a dual position.

Mr. CUMMINS. I think there is no doubt about our authority to do that. I have not suggested a want of authority to do what is proposed in section 56, but I am trying to reconcile the differences that appeared this morning between the Regular Army man and a militiaman. The differences seem to be altogether in the character of their service. Whereas one served only for the purpose of training and maintained his place in society, the other gave his whole time to the country and became a professional soldier. I fear in view of the provisions of section 56 those differences will have to be accounted for in some other way.

Mr. LEWIS. Mr. President, referring in conclusion to the query of the Senator from Wyoming, I wish to call the attention of the able Senator, first, to the proposition respecting these officers being named by the Government. The Senator will surely recall that in the Spanish-American War the volunteer forces that went out from the States were not named by the President, but that they were designated, as the able Senator from Alabama [Mr. UNDERWOOD] calls to my attention from his experience, by the governors of the States or by the men themselves.

Mr. WARREN. Ah, but, Mr. President, they then became a part of the national forces the same as did the militia in the Civil War—the officers and men.

Mr. LEWIS. I ask the able Senator why should not that exact course be duplicated, if we shall have need of more men in any coming conflict, and followed exactly as it has been in the past, adding, however, to it a system that shall insure through discipline and organization our citizen soldiery possessing competent qualifications?

Mr. WARREN. It depends somewhat, of course, on what we shall do as to federalizing the National Guard; but it is perfectly plain that, in the present situation of affairs, if we want a force in addition to the Regular Army to be employed outside of the continental limits of the United States, we have got to have this force in some other form than as a National Guard. If the National Guard enlists as a volunteer force, and as United States troops, well and good; of course, they go into the national forces. All of the volunteers proposed in the pending bill are a part of the Regular Army in the sense that they are not responsible particularly, first, to the States, and, second, to the United States; but they are responsible only to the United States, almost exactly as are enlisted men in the Regular Army who have gone on the retired list, receiving smaller pay but ready at any time to respond to the call of the President and the War Department without reference to the States.

Mr. LEWIS. Mr. President, concluding—and my time has been taken by Senators who have offered me much advice, and have, I am sure, tendered many wise suggestions—I hold to my viewpoint that if we ought to have this intermediate force, then, with the Senator from Iowa, I think there can be no dispute that it ought to be a part of the Army, officered by West Point men or by any other efficient officers we could obtain. The more efficient they are the more necessary it is that they should be called into the service. That they have come from our schools, all the better; that they bring that splendid training to the Government, all the more to be commended; but they should be a part of the Army of the United States. In that I concur; with that I have been in accord; of that to-day I am an advocate; but if the attempt is to be made to create such an intermediate force, it will be neither Regular Army nor National Guard; and there is no place in the organization of this country for that form of service, either under the Federal Constitution or the State constitutions.

I ask my able friend from Wyoming to contemplate this: Does the able Senator from Wyoming, with his experience in military affairs, not recognize that the moment an attempt is made to have a volunteer force that will have nothing to say as to its officers, to be officered by gentlemen from far-off places, who know nothing of the men, and of whom they know nothing, we shall not be able to get enlistments? Will men enter into these organizations to have an officer who is a member of the Army, coming from a State far-away, a gentleman of whom he knows nothing, and who will naturally feel his social superiority to the men in the ranks, notwithstanding the gentlemen in the ranks may occupy the very highest place in the community where they live, not revolt from discipline? Is it to be assumed that under those conditions there can ever be obtained enlistments; that men will enlist under those conditions in a volunteer service which makes them so subordinate to their officers that they will be regarded as inferior and having no voice? Will it be assumed that you can ever get enlistments under such circumstances? My answer from my standpoint is that I do not feel that system will ever be a success; I can not see how it can survive; but if we desire an army that can be called upon in time of need we can increase the National Guard and add to the corps of Regular officers as we may need them and send them out to the National Guard from time to time to aid in the instruction, to act as drill masters and disciplinarians for our citizen soldiers. Then we will have a real volunteer army, as I see it, without the confusion which inevitably will follow the adoption of the plan proposed, and which might result in danger to our institutions.

Mr. President, let this Federal Government join concurrently, as Mr. Justice Story well says, and as Mr. Alexander Hamilton says, with the State governments, federalizing the State troops to the extent of affording them supplies and equipment and putting them on an exact level with the Regular Army for all national purposes, but leave them within their respective States subject to the sovereignty of the State, and to the command of the governor and the government of the State in wholly local affairs. Then, we will have two succinct, clearly defined forces heretofore recognized under the Constitution, justified under the decisions of the Supreme Court, and which have been under practice and not a stranger to the welfare of the Republic.

Mr. President, I have pointed out therefore wherein I feel the bill has a vice, but, as the Senator from Wyoming has said, not an intended one. The committee would have no object in such. If this has crept into the bill, it is because of misapprehension of its effect; and I am assuming to point out its effect as I see it and as it has been pointed out to me by those who are seeking the protection of their just interest and hoping to preserve the welfare of the Guard, by manifesting its dangers which I have assumed to describe.

Mr. President, I have occupied much time without intending to do so, but I feel that the time has been well occupied from the fact that the fallacy of my argument may have been disclosed or the virtue of it manifested on the part of able Senators in their interruptions and suggestions.

Mr. President, I have given utterance to these views in order that the committee may consider them. If upon examination they are found not to be well taken, then the committee no doubt will continue in its present position in adherence to the doctrines as set forth in section 57 of the bill. If these views of mine are conceived by other Senators to be worthy of consideration, then I trust that amendments at the proper place may be submitted by the committee, or, if not submitted by it, that they may be accepted by the committee when presented from other sources. My own purpose is to seek to preserve an organization for the defense of the country which shall have the respect of our countrymen and the affection of the members who constitute it; and not to embark on a course which at the outset will bring confusion and dissipate and destroy the very object to which we are turning our patriotic devotion.

I am necessarily advocating the interest of the National Guard; and I say that I feel their splendid service in the past entitles them to prime and first consideration. Indeed, my mind reverts, as I conclude, to the exquisite expression in the literary production of Ruskin, entitled "Sesame and Lilies," where he portrays the heathen woman confronting the civilized mother. The refined woman had displayed to the heathen one her jewels of adornment. The heathen woman, turning to her children and pointing to these brothers, the Gracchi, exclaimed, "Behold, these are my jewels." I would have our Government, remembering the National Guard, which has given such valorous service in the past, which has suffered so much in sacrifice for their civilization, when there is opportunity to reward them, I would have my Nation turn to the country, as did that heathen mother to the civilized mother, and, beholding that Guard in the

splendor of what they represent, say to the world, "These are my jewels."

Mr. LEE of Maryland. Mr. President, in considering the question of preparedness, which has been forced upon us by modern wars and modern conditions, we must needs be practical. We have got to consider the limitations of recruiting, the limitation of the possible number of soldiers who may be gotten to enlist, as well as the reasonable limitations of expense.

There has been universal testimony rendered before the committees of both Houses to the effect that it is impossible to enlist for the Regular Army, even with the greatest possible effort, more than 50,000 men in a year. Considering the limitation which that imposes, and considering the necessary reductions to any existing force by the operation of expiring terms of enlistment and other causes, it is inevitable that for adequate preparation there must be some resource, some means of providing military defense upon land other than what will come from these limited possible enlistments. I believe that there is probably no point upon which the authorities who have testified have been more harmonious than upon the question of the limitation of the number of men—the 50,000 annually—who can with extraordinary effort be secured by enlistment in the Regular Army under present conditions of national prosperity.

Under these circumstances we necessarily and naturally turn to other forces for defense. We naturally turn to the constitutional soldier mentioned in the Constitution with the Regular Army, and with equal degree of dignity with the Regular Army, namely, the militia of the several States, and consider the defense possibilities in connection with that militia. Although I do not wish to go far afield upon this general subject, but desire to speak to the amendment, in view of what has been said here to-day I want to read into the RECORD an extract from Gen. Washington's address, dated June 8, 1783, to the governors of the respective States recently emerged from the condition of colonies:

The militia of this country must be considered as the palladium of our security and the first effectual resort in case of hostility. It is essential, therefore, that the same system should pervade the whole; that the formation and discipline of the militia of the continent should be absolutely uniform; and that the same species of arms, accoutrements, and military apparatus should be introduced in every part of the United States.

Mr. President, such a result for "the militia of the continent" could come from but one source and but one power, and that would be exercise of Federal power throughout the whole of this country. How natural and inevitable it was that the hand that penned the quotation I have just read should have also signed, as President of the Constitutional Convention, the great provision in section 8 of Article I of the Constitution, which has been referred to here to-day and which I desire to place in the RECORD in connection with the quotation I just made from this official letter of Washington:

The Congress shall have power \* \* \* to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

Further in the same section of Article I:

The Congress shall have power \* \* \* to make all laws necessary and proper for carrying into execution the foregoing powers.

Mr. President, the amendment of the Senator from Iowa provides for the addition to the General Staff of the Army of five representatives from the National Guard or Organized Militia, a very small percentage of the whole of the staff. Naturally, it is suggested that there should be this representation by reason of the present relationship of the National Guard to the United States Army.

It was said here on the floor the other day that we have in the United States a mobile force of 30,000 men in the Regular Army. We have in this country also in the Organized Militia a mobile force of 134,000 men.

Is it inconsistent with the proportions to add to 95 officers on the General Staff, representing the 100,000 soldiers of the Army of the United States in this country and elsewhere, 5 National Guard officers, who represent 134,000 organized troops to join in consultation upon mutually important strategic questions? It is quite consistent, Mr. President, with some degree of representation and with a natural progress in harmony and cooperation which should exist between these two defending forces of our country. When you come to the question of mobilization, as I suggested this morning, the Senator from New York [Mr. WADSWORTH] on yesterday mentioned how the General Staff, having some question of mobilization to consider, sent for a National Guard officer to get from that officer the details and information absolutely necessary in considering the details involved.



I wish to read to the Senate now a quotation from a report by Capt. Mott of the United States Field Artillery, made in 1905, appearing on page 137 of Senate Document 796, presented by the Senator from Oregon [Mr. CHAMBERLAIN]. Capt. Mott calls attention to the question of mobilization; refers to what Switzerland can do in connection with mobilization with her highly organized citizen army, and points out that that citizen army of disciplined Switzers can be organized and handled quicker than our Regular Army can mobilize 30,000 Regular soldiers in this country. That is a statement of a Regular Army officer. Capt. Mott says:

Switzerland can mobilize an army corps in three days, ready in every particular of organization, equipment, munitions, and transport, to march against the enemy; they can mobilize four such corps at one and the same time.

In Senate Document 360, which I presented to the Senate, there is conclusive evidence to show that Switzerland did mobilize 200,000 men in 10 days at the beginning of the great war, and that her mobilization was probably more prompt than either that of Germany or of France. Capt. Mott goes on to say:

Just how many days it would require to concentrate in one place 30,000 of our Regulars with all their baggage and transport, or how long to assemble four such commands of Regulars and militia it is difficult to say, but probably it would be nearer three weeks than three days.

The Swiss mobilize their entire force every summer. Our country has never had any adequate preparation or experience in this respect. We should mobilize the whole National Guard of this country in proper military units every summer as a whole or combined with the Regular Army to make the action complete and educating the country and the military officers to the details of great military movements.

In the consultations which should take place as to mobilization and other military matters some representatives of the numerically greater existing force, the National Guard, should have their appropriate place on the General Staff, and I submit that 5 per cent of the consulting body of these conjoined military forces is not too great a proportion to concede to the National Guard. What I have already said illustrates in one aspect the necessity of this representation.

There is another matter to which I wish briefly to call the attention of the Senate, and which I think will illustrate in a different way the necessity of representation of the National Guard upon the General Staff. There is a great deal of information and a great deal as to the policy of general preparation that does not seem to be easy to get when it operates in favor of the citizen soldier. I have been since the middle of February to the middle of this month collecting, from sources which should have been able to give it at once, the information contained in Senate Document No. 360, as to the efficiency of the Swiss citizen army. If the Senate will take the trouble to read that document, they will see where difficulties and delays have occurred. They will see that there was an order of the Secretary of War preventing the giving out by the War College of this information, so that it was necessary for me to apply through the State Department to the Swiss military authorities for their permission to use information that really should have been directly and readily available, because it was in respect to matters that occurred in a neutral country, and, as is said in the letter of Maj. Lawton, could be seen by almost anybody standing on the corner of any road or street in Switzerland.

Mr. President, I wish to correct certain figures and apparent estimates that appear in the report of the committee and that appear on page 5077 of the CONGRESSIONAL RECORD. In doing so I desire to call attention to the fact that I do not believe this correction would have been necessary; I do not believe that it would have been necessary for me to write the letters which I did write to the Secretary of War, or that it would have been necessary for the Secretary of War to have answered me in the way he did, or that the committee would have been misled, as they apparently have been misled, by the figures which have been furnished to them from some source, if we had representation of the National Guard upon the General Staff. Mr. President, I will ask permission to put in the RECORD without reading the letters to which I refer.

The PRESIDING OFFICER. Without objection, permission is granted.

The letters referred to are as follows:

UNITED STATES SENATE,  
Washington, March 25, 1916.

Hon. NEWTON D. BAKER,  
Secretary of War, Washington, D. C.

MY DEAR MR. SECRETARY: There seems to be considerable difference in the estimates apparently being made in connection with the cost of the National Guard under the Hay House bill and Senate bill 4840. I have understood at the department that one estimate under the Hay bill is \$25,000,000, whereas another estimate for somewhat similar provisions under the Senate bill 4840 is \$46,000,000.

A new estimate is now being made, I believe, of the Hay bill provision on the plan of the estimate made for Senate bill 4840.

I would like to be informed in some detail as to the estimate covering \$25,000,000 or a little over as cost of the provisions under the Hay bill, and also what would be the cost under the Chamberlain bill, estimating the same way as the Hay bill.

I would also like to have the details of the estimates covered by Table XII in the report of Senator CHAMBERLAIN on Senate bill 4840—cost of volunteers, total, \$24,944,000.

Respectfully, yours,

BLAIR LEE.

WAR DEPARTMENT,  
Washington, March 28, 1916.

Hon. BLAIR LEE,  
United States Senate.

MY DEAR SENATOR: Referring to your letter of March 25, requesting information concerning apparent discrepancies in estimates of costs furnished in connection with bill S. 4840 and bill H. R. 12766, I may say in general that the War Department has furnished statements to the Committees on Military Affairs of both the Senate and the House, but is not informed as to the exact combinations of figures or the emphasis placed on the different items so furnished. It is believed that the sums arrived at in Table XI, page 25, Report No. 263, part 1, of the Senate Committee on Military Affairs on bill S. 4840, sets forth the original cost of the National Guard for the years covered in the table. In order to arrive at what would be required in the estimates for 1917, it would be necessary, therefore, to deduct the value of the material already in the hands of the militia. Preliminary figures available indicate that for the fiscal year 1917 estimates will be submitted by the Division of Militia Affairs amounting to approximately \$14,000,000, and that the Quartermaster Corps will submit similar estimates amounting to approximately \$11,000,000; making a total of approximately \$25,000,000 for the militia under these two items. It is assumed that this is the sum which you have in mind and to which you refer in the third paragraph of your letter.

You will note that this does not take into consideration any of the ordnance equipment, which includes small arms, field cannon of various calibers, with their carriages, nor the ammunition for either, both of which are very large items. The exact figures for these items, based on the provisions of bill H. R. 12766, have not yet been arrived at.

I am submitting to the Committee on Military Affairs of the Senate to-day tables pertaining to bill H. R. 12766, which have been figured on the same basis as for bill S. 4840; a copy of these is inclosed.

With reference to paragraphs 3 and 4 of your letter, I am inclosing also copies of statements which have been submitted by the War Department in connection with bill S. 4840, showing the cost of volunteers under the provisions of that bill.

Sincerely yours,

NEWTON D. BAKER,  
Secretary of War.

MARCH 29, 1916.

Hon. NEWTON D. BAKER,  
Secretary of War, Washington, D. C.

MY DEAR MR. SECRETARY: I have received yours of the 28th with inclosed data and beg leave to thank you for same.

Unfortunately, however, this information comes in such shape as to be of very little use unless it is otherwise clarified and explained. For instance, referring to the sums arrived at in Table XI, page 25, report No. 263, part 1, of the Senate Committee on Military Affairs bill S. 4840. Your letter states that the items arrived at set forth the original cost of the National Guard for the years given in the table, but goes on to add that in order to arrive at what would be required in the estimates of 1917 it would be necessary to deduct the value of the material already in the hands of the National Guard. As the value of this material is not given, the sum required to provide for the National Guard for the first year can only be ascertained by further information.

Another difficulty is that Tables XI and XII fail to give the numbers of troops involved. Presumably from some of the substatements the minimum authorized is used for the first column, and at the end of the fourth year the maximum is arrived at. An explicit statement of the numbers would seem to be desirable.

Another suggestion, if you will permit it, would be that there is no summary or recapitulation of Tables XI and XII, or, what is more especially desirable, the first years of each with reference to the details desired and presumably furnished. I have been able to check off some of these details, but the bill being on the floor now for consideration by the Senate I should think that this statement from the department should be more explicit.

I will keep the papers sent me, as they may be of service in connection with other information sent to Senator CHAMBERLAIN, and I would respectfully suggest that my letter of March 25 be referred back to The Adjutant General together with this letter as tending to possibly lead to a more lucid statement.

As a further suggestion, taking page 25, Tables XI and XII, above referred to, and adding the numbers of men estimated for under each, what would be the average cost of a national guardsman under column 4, and what would be the average cost of a volunteer under column 4, and looking at this cost from a double aspect; first, the aspect of all that has been expended in the four years to create the individual guardsman under the fourth year; and, second, carrying forward to the cost of the guardsman of the fourth year only such elements of expenditures in the first three years as provided material in the hands of the guard in the fourth year and with a similar estimate for each volunteer in the fourth year?

As illustrating an objection to the figures given under the first year in Table XI—cost of the National Guard—above, I am advised that the National Guard already has equipment for 151,594 men, and I infer, although it is not positively stated, with reference to this first year's estimate, that it is an estimate for 87,000 men.

Respectfully, yours,

BLAIR LEE.

WAR DEPARTMENT,  
THE ADJUTANT GENERAL'S OFFICE,  
Washington, March 31, 1916.

Hon. BLAIR LEE,  
United States Senate.

MY DEAR SENATOR: The department is in receipt of your letter of the 29th instant, asking for further information concerning the items referred to in Tables XI and XII, page 25, Report No. 263, part 1, from the Senate Committee on Military Affairs, on Senate bill No. 4840. The figures showing the cost of the National Guard and of volunteers, in the tables referred to, appear to have originated with the Senate Committee on Military Affairs, although based on data

presumably obtained from the different bureaus of the War Department. Every effort will be made to give you the additional information that you now desire, and your letter has accordingly been referred to the Chief, Division of Militia Affairs, and the Chief of Ordnance for remark, and they will be requested to furnish the data needed at the earliest practicable date, it being pointed out, however, that the assembling and comparison of the figures underlying those presented in the tables may take some little time.

However, I shall do everything possible to expedite the furnishing of the information that you ask for.

Very sincerely, yours,

H. P. MCCAIN,  
The Adjutant General.

UNITED STATES SENATE,  
March 30, 1916.

Col. GEORGE W. MCIVER,  
Division of Militia Affairs,  
War Department, Washington, D. C.

MY DEAR COL. MCIVER: I have a letter from the Secretary of War dated March 28 in which he forwards some estimates in connection with Senate bill 4840 and referring more especially to Table XI of report 263, page 25, part 1, being the first year's total cost, \$46,349,800, and says, "In order to arrive at what would be required in the estimates for 1917 it would be necessary, therefore, to deduct the value of the material already in the hands of the militia." This is necessary because, as he states in his letter, the \$46,349,800 sets forth the original cost.

I am desirous of knowing how much material is already in the hands of the militia which would have to be deducted to arrive at the requirement for 1917.

Respectfully, yours,

BLAIR LEE.

WAR DEPARTMENT,  
OFFICE OF THE CHIEF OF STAFF,  
DIVISION OF MILITIA AFFAIRS,  
Washington, March 30, 1916.

Hon. BLAIR LEE,  
United States Senate.

MY DEAR SENATOR: I beg to acknowledge receipt of your letter of March 30, 1916, in which you request to be furnished with the value of the material already in the hands of the militia, and in reply thereto to inform you as follows:

Value of field equipment in the hands of the—	
Infantry of the Organized Militia	\$6,927,549
Cavalry	954,336
Field Artillery	8,127,172
Engineers	146,718
Signal Corps	481,653
Coast Artillery	559,488
Sanitary troops	406,439
Total	17,603,355

The above figures do not include such reserve equipment that is known to be on hand in several of the States over and above their present needs, equipment of Coast Artillery armories, and ammunition. It will therefore be necessary to add to the above figures the value of this equipment, which is estimated to amount to approximately \$1,800,000, making a total estimated value of the equipment now in the hands of the militia as \$19,403,355.

Very respectfully, yours,

G. W. MCIVER,  
Colonel Infantry,  
Acting Chief Division of Militia Affairs.

Mr. LEE of Maryland. I will proceed to requote portions of the letters, and especially wish to call particular attention to the portions of the report of the committee which seem to me to be in error. To briefly illustrate the situation, I read from the letter of March 28, 1916, from the Secretary of War to me, as follows:

It is believed that the sums arrived at in Table XI, page 25, report No. 263, part 1, of the Senate Committee on Military Affairs on bill S. 4840 sets forth the original cost of the National Guard for the years covered in the table.

In order to arrive at what would be required in the estimates for 1917 it would be necessary, therefore, to deduct the value of the material already in the hands of the militia.

And from the letter of Adj. Gen. McCain, dated March 31:

The figures showing the cost of the National Guard and of Volunteers in the tables referred to appear to have originated with the Senate Committee on Military Affairs, although based on data presumably obtained from the different bureaus of the War Department.

But the most instructive letter is that of Col. McIver, Acting Chief of the Division of Militia Affairs, dated March 30, in response to my letter of the same date, in which he concludes that the amount of material or the equipment now in the hands of the militia is valued at \$19,403,355.

Mr. President, according to this letter from the Acting Chief of the Militia Division the first-year cost column of Table XI of the report, and on page 5077 of the RECORD, which adds up \$46,349,800, must be reduced \$19,403,355 for the equipment now in the hands of the guard, and when so reduced it will represent a very liberal first-year cost.

In order to start the proposed volunteers on even terms of expense as compared with the National Guard it has been necessary to charge the guard, as of the present time, with a large part of the money spent on them in the last 12 years, which has averaged annually \$5,118,863.39. And to do this the cost column, Table XI Senate committee report, also page 5077 of the RECORD, has been made to include as a first-year cost, and without further explanation, this \$19,403,355 money expended in past years and representing equipment now in the hands of the Organized Militia.

The Senate bill suggests a reduction of the National Guard from 134,000, actual present strength, and 153,000 authorized strength under existing law, to 106,200, a reduction of 27,800 men from actual strength and of 46,800 men from the present authorized strength. If we take the reduced number proposed by the Senate committee and divide it into the improperly enlarged first-year cost, namely, 106,200 men into \$46,349,800, we get an apparent first-year cost of \$437 as the average for the National Guard, and which is a greatly exaggerated first-year cost and, as I now show, greater by more than 50 per cent than the true first-year cost.

If, on the other hand, we deduct the value of equipment now in the hands of the Organized Militia and improperly included, I think, in the first-year column of Table XI (\$46,349,800 less \$19,403,355), it leaves us a more correct estimate of what must be expended the first year for the National Guard, or \$26,946,445.

To get the average cost, divide this sum by 106,000, the reduced number apparently contemplated by the Senate committee for the National Guard, or by 134,000, the present actual strength, or by 153,000, the present authorized minimum strength, and we get in the first instance \$254, in the second instance \$201, and in the third \$176, as the first-year cost per man of the National Guard. The lowest is the most nearly correct, but the average is \$216, or a first-year cost per man of less than half of that which is indicated by the committee's table, as published in the committee report and put in the RECORD at page 5077.

The chairman's statement at the bottom of page 5077 of the RECORD is apparently based on an error, as the force provided for by the first-year column of Table XII is not 261,000, but only 56,829 men.

The first year cost of volunteers—Table XII, page 25, Senate report—may be arrived at by dividing \$24,944,938 by the 3,036 officers and 53,793 men it provides for, and this gives a first-year volunteer cost of \$439 per man.

Mr. CHAMBERLAIN. Mr. President, may I interrupt the Senator?

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from Oregon?

Mr. LEE of Maryland. Certainly.

Mr. CHAMBERLAIN. Are the figures that the Senator is reading and the estimates he is now giving the Senate prepared by the War Department?

Mr. LEE of Maryland. What I am criticizing now is the column presented by the Senator from Oregon as chairman of the committee.

Mr. CHAMBERLAIN. No; but I am asking now if the estimates which the Senator has, and by which he seeks to correct those given in the RECORD, are given to him by the War Department?

Mr. LEE of Maryland. The only estimate that I necessarily have to have, to correct this view of the Senator's that 261,000 men are provided for by this first-year column of Table XII for the volunteers, is as to the actual number of men calculated for in that column. I have that estimate from the War Department, and they put it down as 3,036 officers and 53,793 men.

Mr. CHAMBERLAIN. But the Senator has given a good many figures and a good many estimates. I just wanted to know whether those were figured out by him or some one under him, or whether they were figured out by the War Department?

Mr. LEE of Maryland. The number of men provided for in the first-year volunteer column I have from the War Department.

Mr. CHAMBERLAIN. But the dollars?

Mr. LEE of Maryland. The dollars I get from the Senator's estimate, as published by him.

The explanation of the committee's preference for the proposed volunteer force may be found at page 5077 of the RECORD, where the chairman states, in response to my question, that the first-year estimate in Table XII provides for 261,000 men, which would give an average of \$95 for first-year cost—an obvious impossibility, and contrary to the express statement of the War Department, which I can submit if desired.

The true comparison for the average first-year cost of the National Guard and the Volunteers is between \$216 for the Organized Militia force and \$439 for the Volunteer force; and these figures do not express some of the obvious advantages of the National Guard. The guard have had not only \$19,000,000 and more already spent upon them by the United States, but also have the advantage of between \$100,000,000 and \$200,000,000 in armories and the annual appropriations of all the States.



If the equivalent proper and necessary expenditures were added to the Volunteer first-year cost, that would, in my judgment, largely increase the National Guardsman's advantage as to cost, so that it would be expressed better by a comparison of \$216 to \$500; but without adding any cost to the Volunteer first-year estimate, such as is represented by the State armories and annual State appropriations, the advantage in first-year cost to the National Government of the guardsman over the proposed Volunteer force is as \$216 is to \$439. And the very fact, Mr. President, that these figures and corrections have to be brought in here in this way shows the necessity and the propriety alike of some representation of this great force of citizen soldiers upon the strategic body of the United States Army.

#### PETITIONS AND MEMORIALS.

The VICE PRESIDENT presented a petition of the Georgia State Camp, Patriotic Order Sons of America, of Americus, Ga., praying for an increase in armaments, which was ordered to lie on the table.

He also presented resolutions of the United States Chamber of Commerce, favoring the enactment of legislation to prevent dumping of European products in the United States at the close of the European war, and also for the enactment of legislation to promote industrial efficiency and to protect and develop industries in the United States, which were referred to the Committee on Finance.

Mr. PHELAN presented a petition of the Woman's Club, of Watsonville, Cal., praying for an investigation into conditions surrounding the marketing of dairy products, which was referred to the Committee on Agriculture and Forestry.

He also presented a petition of Local Union No. 292, Musicians' Union, of Santa Rosa, Cal., and a petition of the Federated Trades and Labor Council of San Diego, Cal., praying for the enactment of legislation to further restrict immigration, which were referred to the Committee on Immigration.

Mr. CLARK of Wyoming presented petitions of sundry citizens of Wyoming, praying for an increase in armaments, which were ordered to lie on the table.

Mr. CHAMBERLAIN presented a petition of sundry citizens of Hood River, Oreg., praying for national prohibition, which was referred to the Committee on the Judiciary.

Mr. TOWNSEND presented petitions of sundry citizens of Michigan, praying for national prohibition, which were referred to the Committee on the Judiciary.

He also presented memorials of sundry citizens of Michigan, remonstrating against the enactment of legislation to limit the freedom of the press, which were referred to the Committee on Post Offices and Post Roads.

He also presented memorials of 2,651 farmers in the State of Michigan, remonstrating against the enactment of legislation to prohibit interstate commerce in convict-made goods, which were referred to the Committee on Education and Labor.

He also presented a petition of Major John C. Durst Camp, No. 40, United Spanish War Veterans, of Lansing, Mich., praying for the enactment of legislation to grant pensions to widows and orphans of veterans of the Spanish-American War, which was ordered to lie on the table.

Mr. BURLEIGH presented a petition of Local Union No. 13048, Federal Labor Union, of Millinocket, Me., praying for the enactment of legislation to further restrict immigration, which was referred to the Committee on Immigration.

Mr. GALLINGER presented petitions of 17 citizens of Pittsfield, N. H., praying for national prohibition, which were referred to the Committee on the Judiciary.

He also presented the petition of S. K. Kamaipili, of Honolulu, Hawaii, praying for prohibition in the Hawaiian Islands, which was referred to the Committee on Pacific Islands and Porto Rico.

Mr. POINDEXTER presented the memorial of Lyman H. Wilnot and sundry other citizens of Eglon, Wash., and the memorial of C. D. Raymer and sundry other citizens of Seattle, Wash., remonstrating against the enactment of legislation to limit the freedom of the press, which were referred to the Committee on Post Offices and Post Roads.

He also presented a petition of Walnut Grove Grange, Patrons of Husbandry, of Grandview, Wash., praying for Government ownership of the telephone and telegraph systems, which was referred to the Committee on Post Offices and Post Roads.

He also presented the petition of E. O. Hagberg and sundry other citizens of Venersborg, Wash., praying for the placing of an embargo on munitions of war, which was referred to the Committee on Foreign Relations.

He also presented memorials of Calispell Grange, No. 500, Patrons of Husbandry, of Cusick; of Liberty Grange, No. 272, Patrons of Husbandry, of Granger; and of Walnut Grove

Grange, Patrons of Husbandry, of Grandview, all in the State of Washington, remonstrating against an increase in armaments, which were ordered to lie on the table.

He also presented a memorial of sundry citizens of College Place, Wash., remonstrating against the enactment of legislation for compulsory Sunday observance in the District of Columbia, which was ordered to lie on the table.

He also presented a memorial of South Basin Grange, Patrons of Husbandry, of Orin, Wash.; and a memorial of Pomona Grange, Patrons of Husbandry, of Outlook, Wash., remonstrating against the passage of the bill (S. 2986) to provide capital for agricultural development, to create a standard form of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes, which were ordered to lie on the table.

Mr. WADSWORTH presented a memorial of the Common Council of Hudson, N. Y., remonstrating against the enactment of legislation to provide a literacy test for immigrants, which was referred to the Committee on Immigration.

Mr. NELSON presented petitions of sundry citizens of Minnesota, praying for national prohibition, which were referred to the Committee on the Judiciary.

Mr. LIPPITT presented a memorial of Pomona Grange, No. 40, Patrons of Husbandry, of Laurel, R. I., remonstrating against any change in the parcel-post law, which was referred to the Committee on Post Offices and Post Roads.

He also presented a petition of Local Grange No. 51, Patrons of Husbandry, of Anthony, R. I., and a petition of sundry citizens of Providence and Kingston, all in the State of Rhode Island, praying for national prohibition, which were referred to the Committee on the Judiciary.

Mr. CATRON presented petitions of sundry citizens of Buchanan and Yesso, in the State of New Mexico, praying for national prohibition, which were referred to the Committee on the Judiciary.

Mr. LODGE presented memorials signed by A. Lawrence Lowell, president of Harvard University, and sundry other citizens of Cambridge, Mass., remonstrating against the separation of the Cambridge (Mass.) postal station from the Boston (Mass.) post office, which were referred to the Committee on Post Offices and Post Roads.

#### BILLS INTRODUCED.

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. ASHURST:

A bill (S. 5346) granting a pension to Henry W. Buckley; and

A bill (S. 5347) granting a pension to George Seaver; to the Committee on Pensions.

By Mr. WARREN:

A bill (S. 5348) to authorize the exchange of lot 10, section 19, township 45 north, range 114 west, sixth principal meridian, for certain private lands needed in connection with the construction of Jackson Lake Reservoir, Wyo., and for other purposes; to the Committee on Public Lands.

By Mr. McLEAN:

A bill (S. 5349) to amend section 4414 of the Revised Statutes of the United States relating to the appointment of local and assistant inspectors of steam vessels; to the Committee on Commerce.

By Mr. PHELAN:

A bill (S. 5350) granting a pension to Susan E. Cline (with accompanying papers);

A bill (S. 5351) granting a pension to Rose Butcher (with accompanying papers); and

A bill (S. 5352) granting an increase of pension to Viola E. Webster (with accompanying papers); to the Committee on Pensions.

By Mr. OLIVER (for Mr. PENROSE):

A bill (S. 5353) to correct the military record of John Brown; to the Committee on Military Affairs.

A bill (S. 5354) granting an increase of pension to Susan Liggins;

A bill (S. 5355) granting a pension to John B. Chandler; and

A bill (S. 5356) granting a pension to Joseph Zimmerman; to the Committee on Pensions.

By Mr. PENROSE:

A bill (S. 5357) granting a pension to E. P. Lewis;

A bill (S. 5358) granting an increase of pension to Matilda Stoneback;

A bill (S. 5359) granting an increase of pension to Louise D. Finley; and

A bill (S. 5360) granting an increase of pension to Philip Robuck; to the Committee on Pensions.

By Mr. GORE:

A bill (S. 5361) to encourage military instruction in certain educational institutions; to the Committee on Education and Labor.

By Mr. SMOOT:

A bill (S. 5362) to authorize the Secretary of the Interior to issue patent for certain lands in the State of Utah to Cyrena E. Young; to the Committee on Public Lands.

#### THE JUDICIAL CODE.

Mr. SHERMAN submitted an amendment intended to be proposed by him to the bill (S. 1412) further to codify, revise, and amend the laws relating to the judiciary, which was referred to the Committee on the Judiciary and ordered to be printed.

#### NATIONAL DEFENSE.

Mr. GORE. I submit an amendment to the pending Military Establishment bill, which I ask may be printed in the Record.

There being no objection, the amendment was ordered to lie on the table and be printed, and to be printed in the Record, as follows:

Amendment intended to be proposed by Mr. GORE to the bill (H. R. 12766) to increase the efficiency of the Military Establishment of the United States, viz: On page 196, after section 120, add the following:

"SEC. 121. That before the next succeeding 13 sections of this act shall be administered in any State the legislature thereof shall assent to the same.

"SEC. 122. That the term 'school board' as used in this act shall include any board of regents, board of trustees, board of commissioners, or any other duly constituted authority having legal control and direction of an eligible school as hereinafter defined and having power to employ the members of the faculty thereof and to determine courses of instruction therein.

"SEC. 123. That eligible schools for the purposes of this act shall consist of universities, colleges, academies, high schools, and other secondary schools, not including those institutions to which officers from the active or retired list of the United States Army are now or may be hereafter detailed under existing law which have a bona fide enrollment of not less than 50 male students 16 years of age or over and which have in their employ an instructor qualified, in the judgment of the Secretary of War, to impart suitable military instruction and training.

"SEC. 124. That in addition to the requirements and conditions enumerated in section 123 of this act the Secretary of War shall have the power to prescribe such requirements and conditions and to make such rules and regulations as may be necessary to carry into effect the provisions of sections 121 to 134, inclusive, of this act.

"SEC. 125. That any school board desiring to secure the benefits of this act in behalf of the school or schools under its control and direction shall make and file with the Secretary of War an application to that effect upon a form to be prescribed and furnished by said Secretary. Said application shall state specifically the character, amount, and other conditions concerning military instruction and training to be required by the Secretary of War, and shall include any information that may be required by said Secretary. The board shall also specifically declare its desire to secure the benefits of this act in behalf of the school or schools under its control and direction, and shall obligate itself to the faithful observance and execution of the terms and conditions of this act and of the rules and regulations made in pursuance thereof. The board shall also in its application specify the name of the instructor expected and qualified to impart the required military instruction and training, together with the amount of the total annual salary contracted to be paid such instructor.

"SEC. 126. That upon the receipt of any application fulfilling aforesaid requirements, and if, in the opinion of the Secretary of War, the public interest will be subserved thereby, said Secretary shall ascertain the qualifications of the instructor designated to perform the duties required by this act, and if said Secretary is satisfied as to his fitness, said instructor shall be designated as a military instructor of the United States.

"SEC. 127. That before any such instructor shall enter upon the discharge of his duties, he shall subscribe to the oath of office required of officials of the Government of the United States, and the school board employing such instructor shall execute to the Secretary of War, in such form and in such amount as he may require, a bond for the safe care and keeping of all property of the United States furnished to said board.

"SEC. 128. That when such bond shall have been executed and such instructor shall have entered upon his duties, the Secretary of War is hereby authorized and directed to pay to such instructor from time to time an amount not exceeding two-fifths of his stipulated salary in any one scholastic year: *Provided*, That in addition to such payment upon his salary, the Secretary of War may pay to such instructor an additional sum not exceeding 20 per cent of such salary at the end of the scholastic year, to be based on and graduated by the fitness and efficiency of such instructor: *Provided however*, That the Secretary of War is hereby authorized to discontinue such arrangement and such payments whenever the services of such instructor shall prove unsatisfactory or whenever his employment shall be discontinued.

"SEC. 129. That the Secretary of War is hereby authorized to enter into an agreement with any school board for admittance to military instruction and training of all male persons of suitable age who are not duly enrolled as students in such school.

"SEC. 130. That the Secretary of War is hereby authorized to supply to school boards rifles, side arms, and other necessary military accouterments for the use of persons receiving military instruction and training in pursuance of this act.

"SEC. 131. That the Secretary of War is hereby authorized and directed to prepare for the files of his office from the names of men who have graduated from any educational institution to which an Army officer has been detailed as military instructor under existing laws a list of persons qualified to give military instruction and training; and said Secretary may furnish such list upon request to any school board desiring to take advantage of this act.

"SEC. 132. That whenever the legislature of any State shall give its consent the Secretary of War is hereby authorized to enter into an arrangement with the State superintendent of public instruction of such State for the furnishing of such information and for the performance of such other service in the administration of this act as may be mutually agreed upon by said Secretary and said State superintendent of public instruction; and for compensation for such service the Secretary of War is authorized to pay such superintendent not exceeding \$500 per annum to be graduated in accordance with the character and amount of such service.

"SEC. 133. That to carry into effect the provisions of this act the sum of \$ is hereby annually appropriated out of any money in the Treasury of the United States not otherwise appropriated; and all payments for the purposes of sections 121 to 134, inclusive, of this act shall be made by the Secretary of the Treasury upon the warrant of the Secretary of War.

"SEC. 134. That the Secretary of War is hereby authorized to require such reports to be made by the school boards having in charge the schools benefited by this act and to make such inspections from time to time as he may deem necessary and proper."

Mr. BRANDEGEE. I submit an amendment to add to the committee amendment proposed by the Senator from Oregon [Mr. CHAMBERLAIN], which I ask may be read.

The amendment was read, ordered to lie on the table, and to be printed, as follows:

Amend the amendment proposed by the committee on page 106, end of section 2, as follows:

"Strike out the words 'one hundred and eighty thousand' and insert the words 'two hundred and fifty thousand' and add at the end of the amendment the following:

"*Provided further*, That in addition to the units specified in this section, additional units of Infantry, Cavalry, or Field Artillery to conform in composition with the requirements of sections 19, 20, and 21 of this act may be organized in the discretion of the President; but in no case shall the additional units so organized exceed in total enlisted strength the number of 50,000 men."

RECESS.

Mr. CHAMBERLAIN. Mr. President, I do not know of any other Senator who wishes to address the Senate this evening. I therefore move that the Senate take a recess until Monday at 12 o'clock.

The motion was agreed to; and (at 4 o'clock and 35 minutes p. m., Saturday, April 1, 1916) the Senate took a recess until Monday, April 3, 1916, at 12 o'clock meridian.

## HOUSE OF REPRESENTATIVES.

SATURDAY, April 1, 1916.

The House met at 11 o'clock a. m.

The Chaplain, Rev. Henry N. Couden, D. D., offered the following prayer:

Eternal God, our heavenly Father, we thank Thee for a great country, a great people, a great past, and for the promise of a greater future. And we most earnestly pray that every American citizen may be inspired with a patriotism which shall make him loyal to its sacred institutions, a patriotism broad enough and strong enough to render unto others the privileges which he desires for himself in his civil, political, and religious preferences, that we may live together in peace and harmony and grow in everything that makes a nation truly great, and strive to live in peace with all the nations of the earth, ever remembering that "righteousness exalteth a nation, but sin is a reproach to any people." So may we live, prosper, and grow valiant in the things which make for righteousness. For Thine is the kingdom, and the power, and the glory forever. Amen.

The Journal of the proceedings of yesterday was read and approved.

#### DESERT-LAND ENTRIES IN RIVERSIDE COUNTY, CAL.

Mr. HAYES. Mr. Speaker, I ask unanimous consent to take from the Speaker's table Senate bill 4671, agree to the Senate amendment, and pass the bill, and that an identical House bill, which is now upon the calendar, be laid on the table.

The SPEAKER. The Chair lays before the House the Senate bill, which the Clerk will report.

The Clerk read as follows:

A bill (S. 4671) to exempt from cancellation certain desert-land entries in Riverside County, Cal.

*Be it enacted, etc.*, That no desert-land entry heretofore made in good faith under the public-land laws for lands in townships 4 and 5 south, range 15 east; townships 4 and 5 south, range 16 east; townships 4, 5, and 6 south, range 17 east; townships 5, 6, and 7 south, range 18 east; townships 6 and 7 south, range 19 east; townships 6 and 7 south, range 20 east; townships 4, 5, 6, 7, and 8 south, range 21 east; townships 5, 6, and sections 3, 4, 5, 6, 7, 8, 18, and 19, in township 7 south, range 22 east; township 5 south, range 23 east, San Bernardino meridian, in Riverside County, State of California, shall be canceled prior to May 1, 1919, because of failure on the part of the entrymen to make any annual or final proof falling due upon any such entry prior to said date. The requirements of law as to annual assessments and final proof shall become operative from said date as though no suspension had been had. If the said entrymen are unable to procure water to irrigate the said lands above described through no fault of theirs, after using due diligence, or the legal questions as to their right to divert or impound water for the irrigation of said lands are still pend-